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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

35 In re:
 36 USA COMMERCIAL MORTGAGE COMPANY,
 37 Debtor.

38 Case No. BK-S-06-10725 LBR
 39 Case No. BK-S-06-10726 LBR
 40 Case No. BK-S-06-10727 LBR
 41 Case No. BK-S-06-10728 LBR
 42 Case No. BK-S-06-10729 LBR

43 In re:
 44 USA CAPITAL REALTY ADVISORS, LLC,
 45 Debtor.

46 Chapter Number: 11
 47 Jointly Administered Under
 48 Case No. BK-S-06-10725 LBR

49 In re:
 50 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 51 LLC,
 52 Debtor.

53 **NOTICE OF ORDER OF
 54 UNITED STATES DISTRICT
 55 COURT APPOINTING A
 56 RECEIVER FOR USA
 57 INVESTMENT PARTNERS,
 58 LLC, AND POSSIBLY STAYING
 59 THESE PROCEEDINGS**

60 In re:
 61 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 62 Debtor.

63 [No Hearing Scheduled]

64 In re:
 65 USA SECURITIES, LLC,
 66 Debtor.

67 Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Securities, LLC
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA First Trust Deed Fund, LLC

1 **TO: THE HONORABLE LINDA B. RIEGLE, UNITED STATES TRUSTEE,**
 2 **CREDITORS IN THE ABOVE-CAPTIONED BANKRUPTCY CASES, AND ALL**
 3 **PARTIES IN INTEREST**

4 **PLEASE TAKE NOTICE** that on March 28, 2007, the United States District Court for
 5 the Central District of California (Eastern Division) (the “California Court”) entered its Order
 6 Appointing Temporary Receiver, Temporary Restraining Order and Other Equitable Relief, and
 7 Order to Show Cause Why Preliminary Injunction Should Not Permanently Issue and a
 8 Permanent Receiver Should Not Be Appointed (the “Receiver Order”). In addition to appointing
 9 a receiver for all of the assets of USA Investment Partners, LLC (“USAIP”), the Receiver Order
 10 includes broad stay provisions relating to entities in which USAIP has an ownership interest and
 11 for which USAIP is the manager. USA Capital Diversified Trust Deed Fund, LLC
 12 (“Diversified”) and USACM Liquidating Trust (“USACM Trust,” together with Diversified, the
 13 “Movants”) filed an emergency motion in the California Court seeking clarification of and relief
 14 from the Receivership Order – which was entered without notice to any creditor and to which
 15 USAIP filed a statement of nonopposition. The California Court has scheduled a hearing on such
 16 emergency motion for April 4, 2007.

17 In the meantime, in an abundance of caution, the Movants are filing this notice to call to
 18 the attention of the parties in interest and this Court the possibility that these proceedings may be
 19 stayed. Accordingly, attached hereto are the following:

20 1. Receivership Order, attached hereto as **Exhibit A**.

21 2. Movants’ Emergency Motion For Modification of Order
 22 Appointing Receiver to Allow For Involuntary Bankruptcy Petition to be Filed
 23 Against USAIP (supporting declaration and exhibits omitted), attached hereto as
 24 **Exhibit B**.

25 3. Movants’ Application for Hearing on Shortened Time for
 26 Emergency Motion For Modification of Order Appointing Receiver to Allow For
 27 Involuntary Bankruptcy Petition to be Filed Against USAIP, attached hereto as
 28 **Exhibit C**.

29 4. Plaintiffs’ Opposition to Emergency Motion For Modification of
 30 Order Appointing Receiver to Allow For Involuntary Bankruptcy Petition to be
 31 Filed Against USAIP, attached hereto as **Exhibit D**.

1 5. Movants' Reply to Opposition to Emergency Motion For
2 Modification of Order Appointing Receiver to Allow For Involuntary Bankruptcy
3 Petition to be Filed Against USAIP; Supplemental Declaration of Jeffery D.
Hermann, attached hereto as **Exhibit E**.

4 6. USAIP's Opposition to Emergency Motion For Modification of
5 Order Appointing Receiver to Allow For Involuntary Bankruptcy Petition to be
Filed Against USAIP, attached hereto as **Exhibit F**.

6 7. Order on Application for Hearing on Shortened Time for
7 Emergency Motion For Modification of Order Appointing Receiver to Allow For
Involuntary Bankruptcy Petition to be Filed Against USAIP, attached hereto as
Exhibit G.

9 DATED this 1st day of April 2007.

10 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

11 By: /s/ Jeffery D. Hermann
12 Marc A. Levinson (California Bar No. 57613)
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19 Deed Fund, LLC*

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21 By: /s/ Rob Charles
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23 Susan M. Freeman (Arizona Bar No. 4199)

24 *Attorneys for USACM Liquidating Trust*

1 EXHIBIT A

2 **ORDER APPOINTING TEMPORARY RECEIVER, TEMPORARY RESTRAINING**
3 **ORDER AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY**
4 **PRELIMINARY INJUNCTION SHOULD NOT PERMANENTLY ISSUE AND A**
5 **PERMANENT RECEIVER SHOULD NOT BE APPOINTED**

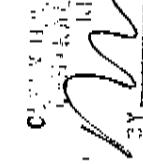
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11 Attorneys for Robert A. Russell, an
12 individual, Placer County Land Investors,
13 LLC, a California limited liability
14 company; and SVRB Investments, LLC,
15 an Arizona limited liability company,
16 Plaintiffs

17 

18

19 **UNITED STATES DISTRICT COURT**

20 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

21 Robert A. Russell, an individual,
22 Placer County Land Investors, LLC,
23 a California limited liability company,
24 and SVRB Investments, LLC, an
25 Arizona limited liability company

26 Plaintiffs,

27 vs.

28 USA Investment Partners, LLC, a
29 Nevada limited liability company,

30 Defendant.

31 Case No. EDCV07-0343 SGL (JCRx)

32 **[Redacted] ORDER APPOINTING
33 TEMPORARY RECEIVER,
34 TEMPORARY RESTRAINING
35 ORDER AND OTHER EQUITABLE
36 RELIEF, AND ORDER TO SHOW
37 CAUSE WHY A PRELIMINARY
38 INJUNCTION SHOULD NOT
39 ISSUE AND A PERMANENT
40 RECEIVER SHOULD NOT BE
41 APPOINTED**

42 Date: **[To Be Set]**

43 Time: **[To Be Set]**

44 Place: **3470 Twelfth St., Room 134
45 Riverside, CA 92501**

46 This matter came before the Court on plaintiffs' "Ex Parte Application for (1)
47 Temporary Receiver, (2) Temporary Restraining Order, (3) Other Equitable Relief,
48 and (4) Order to Show Cause why a Permanent Receiver Should Not be Appointed
49 and a Preliminary Injunction Should Not Issue" (the "Application"). The Court has

1 diversity jurisdiction over this action and venue in this District is appropriate under
2 28 U.S.C. § 1331(a)(2). Based on the evidence presented, the argument of counsel,
3 the authority submitted, being otherwise fully advised in the matter, and good cause
4 having been shown, the Court hereby finds that:

5 **I. FINDINGS OF FACT**

6 A. Defendant, USA Investment Partners, LLC, ("USAIP" or
7 "Defendant") is a limited liability company organized under the laws of the State
8 of Nevada. The members of USAIP are Thomas A. Hantges ("Hantges") and
9 Joseph D. Milanowski ("Milanowski"). Hantges owns a 57% membership
10 interest in USAIP. Milanowski owns a 43% membership interest in USAIP.
11 Milanowski is the manager of USAIP. Hantges and Milanowski are collectively
12 referred to herein as the "Members".

13 B. The plaintiffs (the "Plaintiffs") in this action are Placer County Land
14 Investors, LLC ("Placer"), SVRB Investments, LLC ("SVRB"), and Robert A.
15 Russell ("Russell").

16 C. Russell, an individual, is a resident of the state of Arizona. Placer is
17 a limited liability company organized under the laws of the state of California.
18 The members of Placer are USAIP, Russell, and Land & Castle Investments, LLC
19 ("L&CI"). USAIP owns an 88% controlling membership interest in Placer.
20 Russell owns a 10% membership interest in Placer. L&CI owns a 2%
21 membership interest in Placer. Russell has been the manager of Placer. On
22 March 20, 2007, Russell received a letter (the "Removal Letter") from USAIP
23 seeking to replace him as manager of Placer with USAIP.

24 D. SVRB is a limited liability company organized under the laws of the
25 state of Arizona. The members of SVRB are USAIP and Russell. USAIP owns a
26 50% membership interest in SVRB. Russell owns a 50% membership interest in
27 SVRB. Russell is a manager of SVRB.

28

1 E. The primary assets of USAIP are equity interests in entities that own
2 real estate development projects in various stages of development, primarily
3 located in California and substantially located within the judicial district of this
4 Court.

5 F. Currently, entities affiliated with the members of USAIP are the
6 subject of bankruptcy cases (the "Bankruptcy Cases") pending in the United
7 States Bankruptcy Court for the District of Nevada. These entities include USA
8 Commercial Mortgage Company ("USACM"), USA Capital Realty Advisors,
9 LLC ("USACRA"), USA Securities, LLC ("USAS"), USA Capital First Trust
10 Deed Fund ("First"), and USA Capital Diversified Trust Deed Fund, LLC
11 ("Diversified").

12 G. On January 3, 2007, the Honorable Linda B. Riegle, United States
13 Bankruptcy Judge in the jointly administered Bankruptcy Cases entered a
14 temporary restraining order with regard to an entity (HMA Sales, LLC) in which
15 USAIP holds a 90% equity interest.

16 H. Prior to the commencement of the Bankruptcy Cases, USAIP had
17 received financial support in the way of transfers and loans from USACM and
18 some of the related entities that are debtors in the Bankruptcy Cases. Subsequent
19 to the commencement of the Bankruptcy Cases, such support was not provided.

20 I. Hantges and Milanowski are the subject of an investigation requested
21 by the United States Securities and Exchange Commission (the "SEC") and
22 conducted by the Federal Bureau of Investigation (the "FBI") in connection with
23 the business and operations of USAIP and various related entities.

24 J. USAIP is controlled by Hantges and Milanowski. The Members
25 have admitted to Plaintiffs that during the pendency of the ongoing investigation
26 by the SEC and/or the FBI relating to their activities, they have been and will
27 continue to be precluded from effectively managing the operations of USAIP.

28

1 K. USAIP has substantial liabilities under guarantees of loans made to
2 entities in which USAIP holds a membership interest. USAIP is also obligated to
3 Diversified pursuant to a loan that may amount to as much as \$75 million or more.
4 This loan is secured by a general pledge of the membership interests held by
5 USAIP.

6 L. USAIP has significant unpaid, delinquent obligations, including
7 those owing to Plaintiffs, and unperformed commitments, including those made to
8 Plaintiffs.

9 M. Parties, including Plaintiffs, with claims against USAIP and/or with
10 equity interests in entities in which USAIP also holds an equity interest face
11 imminent and irreparable harm to their opportunity for recovery on their claims
12 and/or equity interests. The assets of USAIP are at risk as long as USAIP remains
13 under the control of the Members.

14 N. USAIP is unable to effectively function and the assets of USAIP are
15 diminishing in value as a result of the lack of any party currently in a position to
16 control the direction and operations of USAIP. Loans with respect to real estate
17 development projects owned by entities in which USAIP holds membership
18 interests, including entities in which Plaintiffs also hold membership interests, are
19 delinquent, real property taxes and other obligations owing with respect to such
20 projects are also delinquent.

21 O. Various real estate development projects owned by entities in which
22 USAIP owns membership interests, including those in which Plaintiffs also own
23 membership interests, are in need of refinancing.

24 P. In its current state, USAIP is unable to obtain refinancing, perform its
25 obligations or meet its commitments to its creditors, including Plaintiffs.

26 Q. The Removal Letter received by Placer from USAIP on March 20,
27 2007, threatens Placer with severe, immediate and irreparable harm. With its
28

1 Members under criminal investigation, USAIP is not capable of effectively
2 managing Placer.

3 R. Unless control of USAIP is promptly removed from Milanowski and
4 Hantges, Placer and all other creditors or USAIP and all parties with equity
5 interests in entities owning real estate in which USAIP also holds an equity
6 interest are faced with severe, immediate and irreparable harm.

7 S. An injunction is necessary to enjoin all but the Court from exercising
8 control of the Property (defined in paragraph 1 below) of the Receivership Estate
9 (defined in paragraph 1 below), and to prevent interference with this Court's
10 exclusive custody over the Property of the Receivership Estate.

11 T. This Court holds the Property in custodia legis, and based on the
12 common law standards pertinent to Receiverships and Injunctions:

- 13 a. any interference with the Court's custody of the Property will
14 result in real, immediate, and irreparable injury;
- 15 b. after the Receiver has filed its preliminary report pursuant to
16 paragraph 7 below, the Receiver will be able to demonstrate a
17 reasonable probability of success on the merits with regard to
18 protecting the interests of creditors of USAIP and preserving and
19 protecting the Property;
- 20 c. there is no plain, speedy, and adequate remedy at law to preserve
21 the Property and to protect it from waste absent the entry of an
22 Injunction; and
- 23 d. An Injunction will protect the Property and will not disserve the
24 public interests.

25 U. An Equitable Stay is necessary to prevent courts of other jurisdictions
26 from instructing the Receiver without application to this Court.

27 V. This Court finds that Waverton Group, LLC, a Colorado limited
28 liability company, with offices at 4101 East Louisiana Avenue, Suite 300, Denver,

1 Colorado, 80246, is qualified and suitable to be appointed as Receiver for
2 Defendant.

3 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:**

4 **II. APPOINTMENT OF TEMPORARY RECEIVER**

5 1. Waverton Group, LLC, is appointed Temporary Receiver over
6 Defendant and the assets of Defendant (the "Property"), with such appointment to
7 take effect immediately and to continue, subject to further Order of this Court, for a
8 period no longer than the next Motion Day following the expiration of twenty (20)
9 days after the date of appointment. The Property and the claims against the Property
10 (the "Claims") shall be collectively referred to herein as the "Receivership Estate."

11 2. Before entering upon its duties, the Temporary Receiver shall be sworn
12 to faithful performance (the "Oath"), a receiver's bond (the "Bond") in the amount of
13 ~~\$500,000.00~~ *as per* \$ _____ shall be filed with the Clerk of this Court, and the Temporary Receiver
14 shall be qualified to do business in the State of California. The Bond shall be
15 maintained until further order of this Court. The Receivership Estate shall bear the
16 expense of purchasing and maintaining the Bond.

17 3. The Temporary Receiver is hereby directed and empowered to take
18 immediate control of the Property for this Court to hold the Property *in custodia*
19 *legis*. The Temporary Receiver shall manage and preserve the Property, subject to
20 this Order, further Orders, and Instructions exclusively from this Court, subject to
21 the exclusive supervision and exclusive control of this Court.

22 4. In the Application and the Declarations submitted therewith, the
23 Plaintiffs have shown good cause that the Court should appoint the Temporary
24 Receiver without notice to creditors and make the appointment temporary under
25 L.R. 66-l.

26 5. The Court hereby Orders all parties to this Receivership Action and all
27 known creditors of the Defendant to show cause why the appointment of the
28 Temporary Receiver should not be made permanent. The Temporary Receiver is

1 instructed to serve a copy of this Order upon all parties to this Receivership Action
2 and all known creditors of the Defendant within twenty (20) days after the date this
3 Order is entered.

4 6. The Temporary Receiver's appointment hereunder shall continue until
5 the next Motion Day following the expiration of twenty (20) days after the date of
6 entry of this Order (April 23, 2007) at 10 a.m. On the Motion Day,
7 this Court will determine whether the appointment of the Temporary Receiver shall
8 be made permanent.

9 7. The Temporary Receiver is hereby Instructed to file with this Court
10 and serve upon the parties to this Receivership Action, within twenty (20) days after
11 the date this Order is entered, a preliminary report setting out the identity, location,
12 and value of the Receivership Assets and any liabilities pertaining thereto. Further,
13 at the time the Temporary Receiver makes its preliminary report, the Temporary
14 Receiver shall make recommendations to the Court, including a recommendation
15 whether, based on its preliminary report, the Temporary Receiver should be made
16 permanent. After providing the parties and creditors of USAIP an opportunity to be
17 heard, this Court will determine whether to accept the Temporary Receiver's
18 recommendation.

19 **III. POWERS OF THE TEMPORARY RECEIVER**

20 8. The Temporary Receiver is hereby given the powers and authority
21 usually held by receivers and reasonably necessary to accomplish the purpose of this
22 Receivership including, without limitation, the specific power to:

- 23 a. take immediate control of the Receivership Estate, to the
24 exclusion of all others;
- 25 b. take control of the Receivership Estate, and manage and preserve
26 the Receivership Estate as reasonably necessary to maximize the value
27 and prevent diminution of the value of the Receivership Estate;

28

1 c. retain security personnel as necessary to secure the Receivership
2 Estate;

3 d. manage, operate, rent, maintain, lease, protect, and otherwise
4 control the Receivership Estate;

5 e. collect rents and revenues, income, profits, and other benefits
6 from the operation and management of the Receivership Estate;

7 f. pay taxes, insurance, utility charges, rent and other expenses and
8 costs reasonably incurred in managing and preserving the Receivership
9 Estate;

10 g. hire, on a contract basis wherever possible, or as employees
11 where required by applicable federal law, the personnel necessary to
12 manage and preserve the Receivership Estate;

13 h. contract for and obtain such services, utilities, supplies,
14 equipment, and goods as are reasonably necessary to manage and
15 preserve the Receivership Estate and to make such repairs to the
16 Property as the Temporary Receiver may reasonably deem necessary
17 provided that no contract shall extend beyond the termination of the
18 Receivership without the permission of the Court;

19 i. make, enforce, modify, negotiate, and enter into such leases
20 (including equipment leases), contracts and concession agreements as
21 the Temporary Receiver may reasonably deem appropriate to manage
22 and preserve the Receivership Estate provided that no such lease,
23 contract, or agreement shall extend beyond the termination of the
24 Receivership without the permission of the Court;

25 j. open, transfer, and change all trade accounts relating to the
26 Receivership Estate, so that all such accounts are in the name of the
27 Receiver;

28

- 1 k. open, transfer and change all bank accounts relating to the
- 2 Receivership Estate, so that all such accounts are in the name of the
- 3 Receiver;
- 4 l. close USAIP's bank account or accounts and transfer the funds to
- 5 a bank account in the name of the Temporary Receiver;
- 6 m. invest the capital of the Receivership Estate, without the
- 7 permission of the Court, in savings accounts or in securities backed by
- 8 the full faith and credit of the United States;
- 9 n. obtain and renew all insurance policies that the Temporary
- 10 Receiver deems reasonably necessary to manage and preserve the
- 11 Receivership Estate and the interest of the Temporary Receiver and the
- 12 parties to this action;
- 13 o. enter into contracts for those services reasonably necessary to aid
- 14 the Temporary Receiver in the administration of the Receivership,
- 15 including the retention of attorneys and accountants, with all reasonable
- 16 expenses incurred in connection therewith deemed to be expenses of
- 17 the Receivership, provided that no such contract shall extend beyond
- 18 the termination of the Receivership without the permission of the
- 19 Court;
- 20 p. borrow from the parties and the claimants of USAIP on an
- 21 unsecured basis and on such other reasonable terms as may be
- 22 acceptable to the Temporary Receiver, funds to meet the capital needs
- 23 of the Receivership Estate in excess of the income from the
- 24 Receivership Estate;
- 25 q. Issue Receiver's Certificates in exchange for funds advanced by
- 26 the parties, Claimants, or third parties during the term of this
- 27 receivership, provided that the Temporary Receiver shall give notice to
- 28 all parties who have entered an appearance in this action and obtain

1 prior approval of this Court. Such receiver's certificates shall be a first
2 and prior lien and a preference claim upon the Estate, or a portion of it
3 at the Temporary Receiver's election;

4 r. Apply for, obtain, maintain, and renew as reasonably necessary
5 all trademarks, copyrights, patents, licenses, and permits required for
6 the operation of the Receivership Estate. Licenses and permits shall be
7 obtained in the name of USAIP wherever possible, and where not
8 possible, in the name of the Temporary Receiver;

9 s. institute such legal actions as the Receiver deems reasonably
10 necessary to collect accounts and debts, enforce agreements relating to
11 USAIP and the Receivership Estate, to protect the Property, and to
12 recover possession of the Property or USAIP from persons who may
13 now or in the future be wrongfully possessing or occupying the
14 Property or USAIP, or any part thereof;

15 t. to take control of any remaining books and records of Defendant
16 (the "Records"); and

17 u. do such other lawful acts not inconsistent with the Order as the
18 Temporary Receiver reasonably deems necessary to manage and
19 preserve the Receivership Estate and to perform such other functions
20 and duties as may from time to time be required and authorized by this
21 Court, by the laws of the state of California or by the laws of the United
22 States of America.

23 **IV. TEMPORARY RESTRAINING ORDER**

24 9. Except as may be expressly authorized by this Court upon notice and a
25 hearing, Plaintiffs, Defendant, and all people, entities, and agencies with actual
26 notice of this Order are enjoined from:

27 b. collecting the Property, or any proceeds, revenues, accounts,
28 issues, profits or other revenues thereof;

- c. withdrawing funds from any bank or other depository account belonging to the Receivership Estate;
- d. terminating or causing to be terminated any license, permit, lease contract or agreement relating to the Property;
- e. altering, erasing, or destroying any Records without the prior written consent of the Temporary Receiver;
- f. holding themselves out as, or acting or attempting to take any and all actions of any kind or nature as officers, employees, representatives, or principals of USA Investment Partners, LLC, or the Receivership Estate; and
- g. otherwise interfering with the operation of the Receivership Estate or the Receiver's exercise of any power hereunder or the Temporary Receiver's discharge of his duties.
- h. Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business entity shall also be bound by this Paragraph 9.

17 10. Except as may be expressly authorized by the Temporary Receiver or
18 by this Court, no person may buy, sell, or otherwise transfer any Property not in the
19 control of the Temporary Receiver.

11: All actions that purport to seek equitable relief against the Temporary
Receiver or the Receivership Estate are hereby stayed regardless of venue or
jurisdiction. The Temporary Receiver is instructed to file a Request for an Order to
Show Cause with this Court if any business or person files any pleading in any other
court seeking equitable relief against the Receiver or the Property without first
seeking relief from this stay.

26 12. All civil legal proceedings wherever located, including arbitration
27 proceedings, foreclosure activities, bankruptcy actions, or default proceedings, to
28 the extent such actions and proceedings interfere with this Court's exclusive control

1 over USAIP or any of its Assets, are stayed in their entirety, and all Courts having
2 any jurisdiction thereof are enjoined from taking or permitting any action until
3 further Order of this Court.

4 13. The stay in this Order does not apply to the assets currently under the
5 control of the Bankruptcy Cases. The Temporary Receiver is instructed to prepare
6 the appropriate pleadings and appear before Judge Riegle in the Bankruptcy Cases
7 for the purpose of requesting Judge Riegle to dissolve the TRO in the Adversary
8 Action to the extent, if any, that it relates to Assets of the Receivership Estate,
9 thereby enabling this Court to complete its jurisdiction over the Assets of the
10 Receivership Estate.

11 **V. TURNOVER OF ASSETS**

12 14. All persons and entities now or hereafter in possession of Property shall
13 forthwith surrender such control and possession to the Temporary Receiver. Without
14 limiting the generality of the foregoing, Plaintiffs, Defendant, and all persons and
15 entities in active concert and participation with the Plaintiffs and Defendants, shall
16 deliver to the Temporary Receiver all Property within their possession or control,
17 including, but not limited to, tangible assets, the Records, evidence and
18 documentation of intellectual properties owned or controlled by Defendant,
19 computers, hard drives, backup tapes, and all other media for the Defendant
20 computer network, all accounting records of USAIP, bank statements and records,
21 passwords for access, checking account, check registers, copies of paid and unpaid
22 invoices, cancelled checks and all other financial records.

23 15. All persons having notice of this Order, and having oral or written
24 agreements with USAIP or statutory or regulatory mandates for the supply of goods
25 or services, including without limitation, all computer software, communication and
26 other data services, centralized banking services, payroll services, insurance, utility
27 or other services to USAIP are hereby restrained until further order of this Court
28 from discontinuing, altering, interfering with or terminating the supply of such

1 goods or services as may be required by the Temporary Receiver; and the
2 Temporary Receiver shall be entitled to the continued use of Defendant's current
3 telephone numbers, fax numbers, internet addresses and domain names, provided in
4 each case that the normal prices or charges for all such goods or services received
5 after the entry of this Order shall be paid by the Temporary Receiver in accordance
6 with the ordinary course of business of Defendant and such supplier, or such other
7 practices as may be agreed upon by the Temporary Receiver and the supplier, or as
8 may be ordered by this Court.

9 16. Subject to the provisions of Section VII below (Document Depository),
10 all attorneys, accountants, engineers, scientists, and other professionals who have
11 represented USAIP, and their representatives, are hereby Ordered to deliver
12 immediately over to the Temporary Receiver all documents, files, and information
13 concerning Defendant and the Property that they have in their possession or control.
14 Any claims for non-payment for services shall be presented as a claim against the
15 Receivership Estate and shall not be used as a defense to turning-over as set forth in
16 this paragraph.

17 17. All privileges in connection with professional representation of
18 Defendant and the Property shall accrue to the sole benefit of the Temporary
19 Receiver and the Receivership Estate and may only be waived by the Temporary
20 Receiver with the consent of this Court.

21 18. If the Temporary Receiver determines, after reasonable inquiry that a
22 person or entity is in violation of the Turnover Order within this Order, the
23 Temporary Receiver is Instructed to give written notice thereof to the person or
24 entity violating the Turnover Order, with a copy of this Order attached, demanding
25 turnover of Property. If the person or entity in possession fails or refuses to turnover
26 the Property after receiving notice, the Temporary Receiver shall file a Request for
27 an Order to Show Cause with this Court.

28

1 19. Paragraphs 14 through 18 above of this Order comprise a traditional
2 Turnover Order, and as such, are Case Management Orders and not Injunctions.

3 **VI. DOCUMENT DEPOSITORY**

4 20. In order to (a) establish a uniform method of identifying documents for
5 use in all proceedings related to this Receivership Action, including the Bankruptcy
6 Cases; (b) to minimize duplication of production efforts requesting and producing
7 parties; (c) to ensure the continued existence of relevant documents; and (d) to
8 reduce the aggregate costs of producing and maintaining documents, the Temporary
9 Receiver is Instructed to establish a depository for documents (the "Document
10 Depository").

11 21. For the purposes of this Order, the term "Document" shall mean
12 documents directly or indirectly related to this Receivership Action and the
13 Bankruptcy Cases that are in the possession of the Defendant and the Members on
14 the date of this Order, and shall include every tangible object capable of making a
15 truthful statement covered by the definitions of writing, recording, photographs,
16 originals, and duplicate in Rule 1001 of the Federal Rules of Evidence.

17 22. The Document Depository shall consist of a facility designated by the
18 Temporary Receiver and located within this District under the control of the
19 Temporary Receiver in which all Documents will be stored until further Order of the
20 Court.

21 23. The Plaintiffs, the Temporary Receiver, and the Members shall
22 designate Documents subject to a claim of privilege, immunity, or confidentiality
23 that are to be placed into the Document Depository under seal (the "Sealed
24 Documents"). The Sealed Documents placed into the Document Depository seal
25 shall only be unsealed pursuant to an Order of this Court.

26 24. Any Sealed Document placed into the Document Depository and
27 designated by the Members as subject to a direct or joint claim of privilege,
28 immunity, or confidentiality in favor of the Members shall be segregated from all

1 other Documents within the Document Depository. Any person, entity, or agency
2 desiring to inspect these Documents shall do so only after making such request of
3 this Court and giving prior notice to the Temporary Receiver and the Members.

4 25. If any criminal proceeding is commenced against the Members or the
5 Defendant, any person, entity, or agency requesting permission to inspect the Sealed
6 Documents shall do so only after making such request of this Court and the tribunal
7 with jurisdiction over the criminal proceeding, and after giving prior notice to the
8 Temporary Receiver and the Members of the request to inspect the Sealed
9 Documents.

10 **VII. JUDICIAL IMMUNITY**

11 26. In accordance with Local Rule 66-6, the Receiver shall prepare and file
12 with the clerk's office routine reports.

13 27. The Temporary Receiver shall prepare and file, under oath, a true and
14 complete inventory of the Property within thirty (30) days after the date of this
15 Order, specifically setting forth therein any qualifications, limitations, or restrictions
16 on the inventory as filed.

17 28. The Temporary Receiver shall enjoy the limited judicial immunity
18 usually applicable to receivers. All who are acting, or have acted, on behalf of the
19 Temporary Receiver at the request of the Temporary Receiver are protected and
20 privileged with the same limited judicial immunity of this Court as the Temporary
21 Receiver has. In order to avail the agents of the Temporary Receiver with these
22 protections and privileges, the Temporary Receiver should file a notice of the
23 agency with this Court.

24 **VIII. ORDER TO SHOW CAUSE RE APPOINTMENT OF PERMANENT**
25 **RECEIVER AND RE PRELIMINARY INJUNCTION**

26 29. Defendant and creditors of Defendant are ordered to show cause, if any,
27 why a Permanent Receiver should not be appointed in this case and that Defendant
28

1 shall appear at a hearing (the "Show Cause Hearing") before this Court on 4-4-07
2 2007, at 1:30 P.M., in Courtroom #1.

3 The United States Courthouse located at 3470 Twelfth Street,
4 Riverside, California

5 The Robal Federal Building and Courthouse located at 255 East
6 Temple Street, Los Angeles, California.

7 It is further ordered that at the Show Cause Hearing, pursuant to Fed. R. Civ.
8 P. 65(b), Defendant and any creditors of Defendant shall show cause, if there is any,
9 why this Court should not enter a Preliminary Injunction, pending final ruling on the
10 Complaint against Defendant, continuing the injunctive relief set forth in this Order.

11 30. In support of its request for a Preliminary Injunction, Plaintiffs or the
12 Temporary Receiver may submit supplemental evidence discovered subsequent to
13 the filing of the Application for a Temporary Receiver and a TRO, as well as a
14 supplemental memorandum. Such documents shall be filed and served by no later
15 than 4:00 p.m. on the sixth court day prior to the Show Cause Hearing as scheduled
16 above. Such documents may be served on the Defendant by faxing or delivering the
17 documents to the attorney for the Defendant. It is further ordered that Defendant
18 and/or creditors of the Defendant shall file and serve any opposition to the issuance
19 of a Preliminary Injunction and the appointment of a Permanent Receiver, including
20 any declarations, exhibits, memoranda or other evidence on which they may intend
21 to rely, and any objections to any evidence submitted by Plaintiffs or the Receiver,
22 by no later than 4:00 p.m. on the fourth court day prior to the Show Cause Hearing.
23 Such documents may be served by fax upon the Plaintiffs' counsel or by personal
24 delivery.

25 31. There will be no direct examination of witnesses at the Show Cause
26 Hearing in this matter. Direct testimony shall be presented in the form of
27 declarations or affidavits.

28

1 **IX. MANAGEMENT OF THE RECEIVERSHIP ESTATE**

2 32. The Temporary Receiver shall operate the Receivership Estate
3 consistent with this Order, further Orders of this Court, and Instructions from this
4 Court. The Temporary Receiver's primary function is to preserve and protect the
5 Property. To the extent the Temporary Receiver, in its business judgment, believes it
6 is necessary to operate USAIP in order to properly preserve and protect the
7 Property, the Temporary Receiver is hereby authorized to do so.

8 33. If the Temporary Receiver intends to operate the Receivership Estate,
9 the Temporary Receiver shall include this decision and its support for this decision
10 in the Temporary Receiver's inventory report as required by paragraph 7 above.

11 34. In operating the Receivership Estate, the Temporary Receiver shall not
12 engage in speculation with the Property, nor shall the Temporary Receiver engage in
13 new business ventures.

14 35. In situations where the Temporary Receiver believes it is necessary or
15 desirable to liquidate any particular asset, the Temporary Receiver shall first request
16 an Order of this Court approving the sale of the asset. With such approval, the
17 Temporary Receiver shall sell the asset with reasonable dispatch and convert the
18 asset into money, discharge all reasonable expenses, costs, and disbursements in
19 connection with the sale of that asset to the extent possible.

20 36. All sales by the Temporary Receiver are in the nature of Judicial Sales,
21 and as such the Temporary Receiver shall follow the common law rules applicable
22 to Judicial Sales in conducting any sale of Property.

23 37. No sale of Assets shall be final until confirmed by Order of this Court.

24 38. The Temporary Receiver need not obtain prior Court approval to sell or
25 otherwise dispose of any tangible personal Property having a depreciated aggregate
26 value, as reflected on Defendant's books of less than \$50,000;

27

28

1 39. The Temporary Receiver may conduct a private or public sale,
2 provided that all sales by the Temporary Receiver shall be subject to competitive bid
3 except sales of Property under paragraph 34 above.

4 40. Any Claimant wishing to bid-in its Claim shall submit an offer
5 specifying the components of the bid within twenty days of the Temporary
6 Receiver's request to this Court to conduct a sale of Property. The Temporary
7 Receiver or any party to this Receivership Action shall file objections to the bid, if
8 any, within fifteen days thereafter.

9 41. By execution of this Order, the Court terminates the Members'
10 responsibility and authority over the Property. The Members shall reasonably
11 cooperate with the Temporary Receiver in connection with all matters regarding
12 transition, operation of the Receivership Estate, and sale of Property. The Members
13 shall make themselves available to assist the Temporary Receiver during normal
14 business hours, upon reasonable notice, for a period not to exceed thirty days. For
15 this work, the Members shall be compensated as set forth in paragraph 46 below.

16 42. The Temporary Receiver is hereby authorized to apply the capital of
17 the Receivership Estate and the revenues collected by the Temporary Receiver in
18 connection with the management and operation of the Receivership Estate in the
19 following order of priority:

- 20 a. First, to pay the cost of the Bond;
- 21 b. Second, to pay the Temporary Receiver's time charges incurred
22 in connection with this Receivership and to prepay or reimburse the
23 out-of-pocket expenses of the Temporary Receiver; and
- 24 c. Third, to pay the necessary and reasonable costs of managing
25 and preserving the Receivership Estate, including the fees of the
26 professionals engaged by the Temporary Receiver.
- 27 d. Fourth, to repay any Receiver's Certificates, with interest as
28 provided for therein.

1 e. All funds in possession of the Temporary Receiver after
2 satisfaction of the foregoing obligations shall be invested by the
3 Temporary Receiver and held pending further order of this Court.

4 43. The Temporary Receiver's compensation for services under this Order
5 and the Temporary Receiver's reasonable out-of-pocket expenses shall be prepaid or
6 reimbursed pursuant to Waverton Group, LLC's Standard Hourly Rates as
7 previously submitted to this Court.

8 44. The Temporary Receiver shall file on at least a quarterly basis an
9 application for approval of the disbursements for professional fees and expenses to
10 himself or others. The Temporary Receiver may pay up to 90% of the professional
11 fees to himself or others and 100% of the expenses on a monthly basis, provided
12 itemized statements are made on a monthly basis and filed under Notice in this
13 Receivership Action.

14 45. Any provision of law to the contrary notwithstanding, the Temporary
15 Receiver is the only acting Manager of Defendant until further order of this Court.

16 46. The Temporary Receiver is authorized, without breaching the peace
17 and if necessary with the assistance of local peace officers or U.S. Marshals, to enter
18 and secure any premises, wherever located or situated, in order to take possession,
19 custody, or control of, or to identify the location or existence of Receivership Assets
20 or Records.

21 47. The Temporary Receiver shall endeavor to wind up the Receivership
22 expeditiously.

23 **X. FEDERAL AND STATE TAX INCOME TAX LIABILITY**

24 48. USAIP, as a limited liability company, has no direct liability for the
25 payment of federal or state income taxes. That liability falls to the Members.

26 49. In order to enable the payment of federal and state income taxes
27 generated by the sale of Property in the form of real estate, the Temporary Receiver
28 shall, within thirty days after the sale of Property in the form of real estate, perform

1 a good-faith calculation of the highest possible taxable income from that sale and
2 pay to the Members from the proceeds of the sale an amount equal to the highest
3 possible taxable income.

4 **XI. EFFECT OF THIS ORDER IN THE EVENT OF APPOINTMENT OF**
5 **PERMANENT RECEIVER**

6 50. Subject to further orders of this Court, in the event that the Temporary
7 Receiver is appointed as the Permanent Receiver in this action, all terms and
8 provisions of this Order shall continue and remain in full force and effect.

9
10 DATED: 3-27-07

~~SG Larson~~ SG Larson ~~United States District Court Judge~~

11
12 STEPHEN G. LARSON
13
14 UNITED STATES DISTRICT JUDGE

15 Presented by:
16

17 SulmeyerKupetz
18 a Professional Corporation
19 By David S. Kupetz

20 David S. Kupetz

21 Attorneys for Robert A. Russell, an individual,
22 Placer County Land Investors, LLC, a California
23 limited liability company, and SVRB Investments,
24 LLC, an Arizona limited liability company, Plaintiffs

25

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PROOF OF SERVICE

2

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, Thirty-Fifth Floor, Los Angeles, California 90071-1406.

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On March 23, 2007, I served the following document(s) described as **[PROPOSED] ORDER APPOINTING TEMPORARY RECEIVER, TEMPORARY RESTRAINING ORDER AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE AND A PERMANENT RECEIVER SHOULD NOT BE APPOINTED** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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BY FAX TRANSMISSION: Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was 213.629.4520. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address dperez@sulmeyerlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

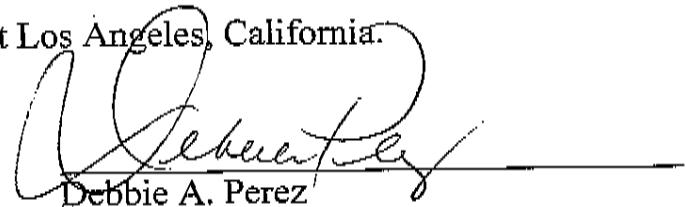
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

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Executed on March 23, 2007, at Los Angeles, California.


Debbie A. Perez

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VIA E-MAIL OR ELECTRONIC TRANSMISSION

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Chesnoff & Schonfeld, APC

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Telephone Number: (702) 384-5563

Fax Number: (702) 598-1425

1 **EXHIBIT B**

2 **EMERGENCY MOTION FOR MODIFICATION OF ORDER APPOINTING RECEIVER**
3 **TO ALLOW FOR INVOLUNTARY BANKRUPTCY PETITION TO BE FILED**
4 **AGAINST USAIP**

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Pro hac vice application in process

Attorneys for Creditors and Interested Parties USA Capital Diversified Trust Deed Fund, LLC and the USACM Liquidating Trust

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

Robert A. Russell, an individual,
Placer County Land Investors, LLC,
a California limited liability company,
and SVRB Investments, LLC, an
Arizona limited liability company

Plaintiff,

V.

USA Investment Partners, LLC, a
Nevada limited liability company,
Defendant.

Case No. EDCV07-0343 SGL (JCRx)

**Emergency Motion For
Modification of Order Appointing
Receiver to Allow For Involuntary
Bankruptcy Petition to be Filed
Against USAIP**

Hearing Date: TBD
Hearing Time: TBD

This Emergency Motion For Modification of Order Appointing Receiver to Allow For Involuntary Bankruptcy Petition to be Filed Against USAIP (this "Emergency Motion") is made by the USA Capital Diversified Trust Deed Fund, LLC ("Diversified ") and the USACM Liquidating Trust ("USACM Trust," and collectively, "Movants"), both entities being successors pursuant to the Order Confirming the Third Amended Plan of Reorganization in the United States Bankruptcy Court, District of Nevada, Las Vegas Division, to entities closely associated with

1 USA Investment Partners, LLC both entities being successors under a plan of reorganization
 2 recently confirmed by the United States Bankruptcy Court for the District of Nevada to debtors
 3 related to USA Investment Partners, LLC ("USAIP"). Movants were given no notice of the
 4 motion to appoint a receiver in this Court, even though it is apparent from the pleadings filed in
 5 this Court that Movants are vitally interested in USAIP. At the time Movants received a copy of
 6 the Court's order appointing a temporary receiver in the above case ("Receiver Order"), Movants
 7 were literally hours away from filing an involuntary chapter 11 bankruptcy petition against
 8 USAIP in the Bankruptcy Court and seeking the immediate appointment of an interim trustee for
 9 USAIP.

10 By this Motion, Movants seek to clarify that the Court's Receiver Order does not
 11 prevent Movants and other petitioning creditors from invoking their rights under the Bankruptcy
 12 Code by filing an involuntary bankruptcy petition against USAIP, or alternatively to modify the
 13 order to so provide. USAIP is a company with its principal operations in Las Vegas, with the
 14 books and records of USAIP and the many companies associated with USAIP also located in Las
 15 Vegas and the subject of existing federal court document control orders there. USAIP is
 16 insolvent, and its extensive web of assets and liabilities and the claims against its management
 17 need the structure and procedures of a bankruptcy case that is supervised by a chapter 11 trustee
 18 with substantial resources and experience in such complex, multi-million dollar proceedings.
 19 USAIP's creditors should not suffer the loss of Bankruptcy Code rights and remedies, such as the
 20 ability to avoid preferential transfers, that occurs with each passing day before a bankruptcy
 21 petition is filed. They should not bear the ultimate expense of evidentiary hearings and filings
 22 duplicating those in the Nevada Bankruptcy Court to familiarize this Court with facts about
 23 USAIP, its business and its owners. USAIP owns no real or personal property located within this
 24 judicial district, and with pending bankruptcy cases in Las Vegas, Nevada involving no less than
 25 eight companies related to and involving USAIP, that is the right venue for judicial oversight of
 26 its insolvency case.

27 **BACKGROUND FACTS**

28 1. Almost a year ago, on April 13, 2006, USA Commercial Mortgage Company

1 ("USACM") filed its chapter 11 case in the District of Nevada, Las Vegas Division, the
 2 Honorable Linda B. Riegle presiding. Four companion cases were filed, including Diversified.
 3 USACM was an arranger and servicer of loans that totaled approximately \$962 million at the time
 4 of the bankruptcy filings. USACM was beneficially owned by Joseph Milanowski
 5 ("Milanowski"), Thomas Hantges ("Hantges") and Paul Hamilton (or their family trusts).

6 2. USAIP is a Nevada limited liability company owned by Milanowski (as trustee for
 7 the Joseph D. Milanowski 1998 Trust), Hantges (as trustee of the Thomas A. Hantges 1997 Trust)
 8 and Paul Hamilton. Milanowski and Hantges were the managers of USAIP through February
 9 2005. Thereafter, Milanowski has been the sole manager.

10 3. USAIP appears to be the business entity through which Milanowski and Hantges
 11 conducted their personal real estate development activities. Its primary assets are equity member
 12 interests in limited liability companies engaged in real estate development activities. USAIP is
 13 the manager of many of the limited liability companies in which it owns a member interest.

14 4. USAIP's only business offices are located in Las Vegas, Nevada. Prior to the
 15 bankruptcy filings, its offices were in the same location as USACM and the many related
 16 companies owned or controlled by USAIP. According to the information available to Movants,
 17 USAIP has no physical presence in California.

18 5. Contrary to the impression that the Court may have developed as a result of
 19 reviewing the moving papers for the appointment of a receiver, the Placer Vineyards project in
 20 which Plaintiff is also involved is not the principal asset of USAIP, and the scope and breadth of
 21 USAIP's business extends beyond the several entities with real estate development interests
 22 described in the receivership application. According to the best information now available to
 23 Diversified and the USACM Trust, USAIP directly or indirectly owns equity interests in at least
 24 50 entities, and manages or co-manages approximately 42 of them.

25 6. Contrary to the inferences in the moving papers seeking a receiver in this Court,
 26 USAIP owns no real or personal property located within this judicial district, and in fact owns no
 27 real or personal property within the State of California. The reason is simple – while USAIP
 28 owns member interests in limited liability companies that in turn own real estate in California,

1 Nevada, and several other states, USAIP's property consists of intangible member interests –
 2 equivalent to a Nevada resident owning stock in a company that owns California real estate.
 3 Thus, this Court will likely never be called upon to administer California real estate in connection
 4 with this receivership action.

5 7. In fact, USAIP has filed pleadings in state court proceedings confirming that
 6 USAIP has no assets in the State of California. See, "Notice of Opposition to Application For
 7 Writ of Attachment" filed in Riverside Superior Court, a true and correct copy of which is
 8 attached to the declaration of Jeffery D. Hermann ("Hermann decl.") as Exhibit "7". The Court is
 9 requested to take judicial notice of this pleading under Rule 201 of the Federal Rules of Evidence.

10 8. Of the some 42 entities that are managed either directly or indirectly by USAIP,
 11 many are borrowers on loans arranged by USACM for investors (many of which investors are
 12 creditor beneficiaries of the USACM Trust) and some are entities that are obligors of Diversified.

13 9. USAIP is the borrower on the 10-90, Inc. loan from Diversified, which, as of the
 14 date hereof includes unpaid principal in excess of \$55 million, and accrued and unpaid interest in
 15 excess of \$30 million ("10-90 Loan").

16 10. USAIP also is a substantial obligor to both Movants as the borrower on a
 17 promissory note executed in May, 2006, and approved by the Nevada Bankruptcy Court in July,
 18 2006. Such loan is referred to herein as the "\$58 million Note" and, as of the date hereof, all
 19 \$58,374,918.81 in principal amount is unpaid, as is interest at 7.75% accrued since May 31, 2006.

20 11. USAIP has pledged certain of its limited liability member interests to secure the
 21 10-90 Loan and the \$58 million Note. While Diversified and the USACM Trust rely upon the
 22 value of such collateral for repayment of such obligations, they acknowledge that both obligations
 23 are significantly undersecured.

24 12. Together, Movants hold more than \$145 million in debt of USAIP.

25 13. Diversified has commenced involuntary bankruptcy petitions in Las Vegas against
 26 two of the entities managed and majority owned by USAIP – Tree Moss Partners LLC and USA
 27 Investors VI, LLC. An order for relief has already been entered in the Tree Moss Partners case
 28 and a trial is set in the Las Vegas Bankruptcy Court for April 30th, 2007, on the involuntary

1 petition in the USA Investors VI case. Diversified has noticed discovery of USAIP and the
 2 entities managed by USAIP in connection with such upcoming trial.

3 14. Diversified has filed suit in the Las Vegas Bankruptcy Court against another entity
 4 managed and majority owned by USAIP – HMA Sales, LLC. Diversified has conducted
 5 discovery and has discovery pending from USAIP in that matter, currently set for trial in early
 6 June, 2007.

7 15. Diversified and the USACM Liquidating Trust (successor to USACM under the
 8 confirmed plan of reorganization) have other claims against USAIP, as well as Milanowski and
 9 Hantges, and intend to establish those claims, either by separate suit or by the filing of a proof of
 10 claim in the bankruptcy case of USAIP.

11 16. Movants have also conducted discovery against entities controlled by USAIP
 12 during the course of the bankruptcy case and have developed information about the financial and
 13 business affairs of USAIP and the assets of USAIP by reviewing the books and records of
 14 USACM (although USAIP has failed to cooperate with Movants by voluntarily providing USAIP
 15 all books and records).

16 17. As a result of discovery already completed and the review of USACM books,
 17 records and financial documents, Movants are aware of the incredibly complex web of inter-
 18 relationships between and among Diversified, USACM, USAIP and at least 50 entities in which
 19 USAIP has an ownership interest, and the incredibly complex and voluminous dealings among
 20 such entities. See Organization Charts attached as Exhibit "B" to Exhibit "4" of the Hermann
 21 decl.

22 18. Because of the year-long bankruptcy proceedings, and the ongoing litigation in
 23 which USAIP is managing the defendants, the Honorable Linda B. Riegle, United States
 24 Bankruptcy Judge, District of Nevada, sitting in Las Vegas, has also become very familiar with
 25 the business model of USACM and USAIP, the extent of the inter-relationships between USAIP
 26 and the chapter 11 debtors, including Diversified, and most importantly, the plethora of legal
 27 issues that have been spawned by the melt-down of the USACM/USAIP empire of Messrs.
 28 Milanowski and Hantges.

1 19. Tens of millions of dollars have already been expended by professionals both in
 2 cleaning up and restating the books and records of USACM and its related entities (including
 3 numerous transactions between USACM and USAIP) and acquiring the knowledge of complex
 4 dealings orchestrated by Messrs. Milanowski and Hantges, who, before the bankruptcy filings a
 5 year ago, had unfettered control over almost all of such entities.

6 20. As an example, the largest loan in the entire USACM portfolio is a loan referred to
 7 as the 10-90 Loan. The 10-90 Loan is owned 100% by Diversified and has a principal amount of
 8 \$55 million and delinquent interest of over \$30 million. Presumably because the prospectus by
 9 which individual investors were enticed to invest money in the Diversified fund prohibited insider
 10 loans, and prohibited loans concentrated to a single borrower, the documentation orchestrated for
 11 the 10-90 Loan by Messrs. Milanowski and Hantges evidenced that Diversified was making loans
 12 to an entity known as 10-90, Inc., controlled by David Fogg (the same David Fogg that provided
 13 the Court with a declaration in support of the appointment of a receiver).

14 21. However, forensic accountants have determined that all loan proceeds funded by
 15 Diversified to 10-90, Inc. were almost immediately wire transferred to another entity controlled
 16 by David Fogg (Mountain Vista, Inc.). Mountain Vista, Inc. then immediately wire transferred
 17 the loan proceeds to USAIP. In effect, the David Fogg entities were mere "straw men" assisting
 18 Messrs. Milanowski and Hantges in plundering Diversified by making prohibited insider loans in
 19 large amounts that violated the concentration limits of the Diversified prospectus and
 20 "laundering" that money through successive transfers of entities controlled by David Fogg.¹

21 22. In addition, although the Receiver Order instructs the receiver to establish a
 22 document depository for USAIP records, the Nevada Bankruptcy Court has already entered an
 23 order that was negotiated over a period of months between counsel for the chapter 11 debtors and
 24 counsel for USAIP putting into place detailed and complex procedures for review and designation
 25 of ownership and privilege claims with respect to over 200 boxes of documents in which USAIP

27 1 Eventually, David Fogg became concerned about his liability for participating in this scheme and requested that his
 27 entity be removed from the straw man position. Messrs. Milanowski and Hantges, controlling all sides of the
 28 transaction, prepared documentation by which Diversified consented to 10-90, Inc. being released (along with the
 28 personal guaranty of David Fogg) and USAIP being substituted in as the borrower on the loan.

1 has claimed ownership and has claimed privilege, and for imaging and sharing of thousands of
 2 other documents. See Hermann decl., Exhibit "6". That privilege review process is ongoing with
 3 counsel for all sides having spent the better part of last week in Las Vegas with the expectation of
 4 continuing this week to review disputed documents. Before the filing of the chapter 11 cases a
 5 year ago, USAIP was managed out of the same offices occupied by USACM and the many other
 6 related companies owned or managed by USAIP and USAIP was managed by Hantges,
 7 Milanowski and their delegates, with documents commingled, creating the dispute as to
 8 documents that were created by USACM but relate in whole or part to USAIP or companies
 9 managed by USAIP.

10 23. The professionals that represent the USACM Liquidating Trust and Diversified
 11 represented the committees for such entities during the chapter 11 cases and had no independent
 12 ability to take action on behalf of USACM or Diversified absent specific Bankruptcy Court order
 13 providing such authorization. However, as a result of the confirmation of a joint plan of
 14 reorganization by the Nevada Bankruptcy Court, the effective date of which was March 12, 2007,
 15 these professionals now represent the successor entities to the chapter 11 debtors, which entities
 16 are charged with liquidating assets and pursuing claims to generate funds to repay the hundreds of
 17 millions of dollars that literally thousands of investors have invested. As a result of their chapter
 18 11 roles, these professionals have amassed a great wealth of information about the
 19 USACM/USAIP family of companies and are charged with the duty to maximize the recovery of
 20 the money owed to literally thousands of creditors and investors. Many of those creditors and
 21 investors are Nevada residents. Movants have proceeded diligently in the two weeks in which
 22 they have had the authority to prepare for filing the involuntary bankruptcy petition against
 23 USAIP and to seek authority for immediate appointment of an interim trustee by the Bankruptcy
 24 Court.

25 24. Movants first learned of the filing of this receivership action on March 28, 2007, at
 26 approximately 1:30 p.m. when counsel for Plaintiff emailed the Receiver Order and certain other
 27 pleadings to counsel for the USACM Trust. At that time, Movants were literally hours away
 28 from commencing an involuntary bankruptcy case in the Nevada Bankruptcy Court before Judge

1 Riegle, who has almost a year's worth of knowledge and experience in the facts and legal issues
2 presented by the USACM/USAIP debacle, and from filing a simultaneous motion seeking the
3 immediate appointment of an interim trustee and severe restrictions upon the operating authority
4 of Messrs. Milanowski and Hantges pending the appointment of such a trustee. Movants have
5 discussed at great length the selection of an appropriately qualified trustee with the US Trustee's
6 office in Las Vegas and the representation of the trustee by a Las Vegas firm that was already
7 well-versed in the facts and legal issues presented by the USACM/USAIP debacle.

8 25. Copies of the involuntary petition, the motion seeking the appointment of an
9 interim trustee, and supporting declarations and exhibits that Movants are prepared to file with the
10 Las Vegas Bankruptcy Court at the first opportunity are attached to the Hermann decl. as Exhibits
11 "1" through "5".

12 26. Although not parties to this action, the Receiver Order arguably prevents Movants
13 from taking any such action.

14 27. Rather than offend this Court, if this Court's intention was to preclude the
15 application of the bankruptcy laws to USAIP for some reason, Movants are seeking clarification
16 from the Court whether the Court truly intended to displace a bankruptcy filing against USAIP.

17 28. Thus, by this Motion, Movants seek a clarification of the Receiver Order clarifying
18 that nothing therein would prevent Movants from filing the involuntary bankruptcy petition
19 against USAIP and seeking the appointment of a trustee in that bankruptcy case. Movants also
20 seek clarification that litigation already ongoing in the Nevada Bankruptcy Court against entities
21 in which USAIP has an ownership interest and for which USAIP is the manager would not be
22 stayed by the Court's Receiver Order.

23 29. Alternatively, the Movants respectfully request that this Court modify its
24 Receivership Order to allow them and other petitioning creditors to file an involuntary chapter 11
25 bankruptcy petition against USAIP, and seek immediate appointment of an interim trustee. As set
26 forth in the attached bankruptcy petition and motion for interim trustee appointment, USAIP is
27 insolvent. Its assets and liabilities are complex and interrelated with the many related chapter 11
28 cases pending in Nevada, and its actions and its books and records are the subject of existing

1 Nevada Bankruptcy Court orders. The Movants do not question this Court's willingness or ability
2 to take on an incredibly contentious and complex insolvency case. They are concerned, however,
3 about the economics of bringing a new set of professionals up to speed on the year-long learning
4 curve and the need to educate the Court on all manner of factual and legal issues the Nevada
5 Bankruptcy Court has already addressed. Given the tens of millions of dollars that the creditors
6 of USACM/USAIP will likely lose, despite the best efforts of the professionals of the USACM
7 Liquidating Trust and Diversified, such economies are an important consideration to the
8 constituencies of Movants.

9 30. The Movants are also concerned about whether the less formal, less structured
10 legal procedures for a receivership are best suited for complex, multi-faceted proceedings of an
11 insolvent entity such as USAIP. They are concerned that potential causes of action arising under
12 the Bankruptcy Code, such as the ability to avoid preferential transfers, not be lost to the creditors
13 of USAIP. The Movants also are concerned that the experience and resources of the designated
14 temporary receiver are no match for the tasks likely associated with monumental challenges it
15 faces in light of USAIP and its approximately 50 related companies and its Fifth Amendment-
16 asserting owners. The duties include document control, asset searches and management, massive
17 litigation and the resolution of hundreds of millions of dollars of claims.

18 31. The Movants do not seek to dismiss this receivership action. They ask that the
19 temporary receiver exercise as much control over USAIP as he is able to do, while the Movants
20 proceed with their involuntary chapter 11 bankruptcy petition against USAIP and their emergency
21 motion for appointment of an interim trustee. If the Movants do not succeed in their requests for
22 relief in the Bankruptcy Court, this Court's authority will not be altered in any way. If the
23 Nevada Bankruptcy Court grants the relief requested by Movants, an interim bankruptcy trustee
24 will be appointed and this Court's temporary receiver will transfer assets of the receivership estate
25 to the bankruptcy trustee pursuant to 11 U.S.C. § 543.

MEMORANDUM OF LAW

27 Although not parties to the action, Diversified and the USACM Liquidating Trust are
28 entities that are potentially within the scope of the temporary restraining order embodied within

1 this Court's Receiver Order and thus have standing to seek clarification or a modification of such
 2 restraining order as the same may apply to them.

3 Paragraph 12 of the Receiver Order states as follows:

4 12. All civil legal proceedings wherever located, including arbitration
 5 proceedings, foreclosure activities, bankruptcy actions, or default proceedings, to
 6 the extent such actions interfere with the Court's exclusive control over USAIP or
 7 any of its Assets, are stayed in their entirety, and all Courts having any jurisdiction
 8 thereof are enjoined from taking or permitting any action until further order of this
 9 Court.

10 Read literally, and with the realization that USAIP is an owner and the manager of many
 11 of the entities currently involved in litigation before the Las Vegas Bankruptcy Court (HMA
 12 Sales, LLC, Tree Moss Partners, LLC and USA Investors, VI LLC, for example), this paragraph
 13 would arguably stay the further prosecution of those actions and prevent further lawsuits
 14 contemplated by Movants from being filed in the Nevada Bankruptcy Court or anywhere else.
 15 But most importantly, this paragraph would arguably disenfranchise Movants from seeking
 16 remedies under the Bankruptcy Code, including the commencement of an involuntary bankruptcy
 17 case against USAIP.

18 While District Courts may have such broad power and discretion in appropriate cases, that
 19 discretion is usually invoked only when (1) principals and wrongdoers in control of an entity that
 20 a District Court has ordered into receivership are seeking to circumvent that Court's authority in
 21 order to regain control over the entity by filing a voluntary chapter 11 case (where management
 22 normally stays in control of the company); or (2) where, in the case of an ongoing and
 23 established receivership, the Court cites the economies of retaining the existing receiver over the
 24 commencement (usually by a disgruntled creditor unhappy with the decisions of the receiver) of a
 25 new bankruptcy case, thereby avoiding the duplication of effort that would be involved. See, e.g.,
 26 *In re O'Neill Village Personal Care Corporation*, 88 B.R. 76 (Bankr.W.D.Penn.1988).

27 Of course, the situation here is the opposite of the situation in the *O'Neill* case, as
 28 bankruptcy proceedings involving closely related companies have been ongoing for almost a year

1 – bankruptcy proceedings in which USAIP has been actively involved either on its own behalf or
 2 on behalf of the many entities it manages. In this case, it is the receivership that would involve
 3 the waste of resources caused by the great duplication of efforts already expended in the ongoing
 4 bankruptcy cases.

5 Alternatively, in the event that the Court deems it not appropriate to clarify or modify the
 6 Receiver Order to allow Movants to commence an involuntary bankruptcy case against USAIP
 7 and to allow Movants and other parties to continue with litigation now pending in the Nevada
 8 Bankruptcy Court involving entities owned, controlled or managed by USAIP, then for the
 9 reasons stated herein, Movants seek modification of the order to allow such actions.

10 **CONCLUSION**

11 Based on the foregoing, Diversified and the USACM Liquidating Trust respectfully
 12 request that the Court clarify or modify the Receiver Order such that Movants and other
 13 petitioning creditors may commence an involuntary bankruptcy case against USAIP and seek
 14 immediate appointment of an interim trustee, and that Movants and other parties may continue
 15 with litigation now pending in the Nevada Bankruptcy Court involving entities owned, controlled
 16 or managed by USAIP.

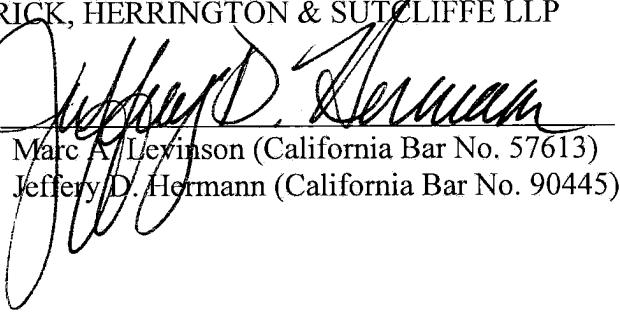
17 Respectfully submitted this ____ day of March 2007.

18 LEWIS and ROCA LLP
 19

20 Rob Charles (Nevada Bar No. 6593)
 Susan M. Freeman (Arizona Bar No. 4199)
 21 Pro hac vice applications in process

22 and

23 ORRICK, HERRINGTON & SUTCLIFFE LLP
 24

25 By: 
 26 Marc A. Levinson (California Bar No. 57613)
 Jeffery D. Hermann (California Bar No. 90445)

1 EXHIBIT C

2
3 **APPLICATION FOR HEARING ON SHORTENED TIME FOR**
4 **EMERGENCY MOTION FOR MODIFICATION OF ORDER APPOINTING RECEIVER**
5 **TO ALLOW FOR INVOLUNTARY BANKRUPTCY PETITION TO BE FILED**
6 **AGAINST USAIP**

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11 *Attorneys for Creditors and Interested Parties USA Capital Diversified Trust Deed Fund,
 12 LLC and the USACM Liquidating Trust*

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

15 Robert A. Russell, an individual,
 16 Placer County Land Investors, LLC,
 a California limited liability company,
 and SVRB Investments, LLC, an
 17 Arizona limited liability company

18 Plaintiff,

19 v.

20 USA Investment Partners, LLC, a
 21 Nevada limited liability company,
 Defendant.

Case No. EDCV07-0343 SGL (JCRx)

**Application for Hearing on
 Shortened Time for Emergency
 Motion For Modification of Order
 Appointing Receiver to Allow For
 Involuntary Bankruptcy Petition
 to be Filed Against USAIP**

22 Hearing Date: TBD
 Hearing Time: TBD

24 USA Capital Diversified Trust Deed Fund, LLC (“Diversified”) and the USACM
 25 Liquidating Trust (together with Diversified, “Movants”) move this Court for an order setting
 26 their Emergency Motion For Modification of Order Appointing Receiver to Allow For
 27 Involuntary Bankruptcy Petition to be Filed Against USAIP (“Motion”) for an expedited hearing.
 28

1 This motion is supported by the Declaration of Jeffery D. Hermann filed contemporaneously
2 herewith (the "Hermann Decl.").

3 The Motion explains that the Movants and a third creditor planned to file immediately an
4 involuntary chapter 11 petition against USA Investment Partners, L.P. ("USAIP"), the entity that
5 is the subject of this Court's receivership order heard without notice to Movants on March 28,
6 2007 (the "Receivership Order"). The filing was to take place in the United States Bankruptcy
7 Court for the District of Nevada (the "Bankruptcy Court"), where chapter 11 cases of seven
8 related entities are pending before the Honorable Linda B. Riegle. Such cases include five related
9 chapter 11 cases, including of Diversified and In re USA Commercial Mortgage Company
10 ("USACM"). The five are jointly administered under Case No. 06-01729.

11 The USACM Trust was created pursuant to a recently-confirmed reorganization plan in
12 the five cases; it holds a \$58 million principal note from USAIP approved by the Bankruptcy
13 Court. Diversified holds a USAIP note in a principal amount in excess of \$55 million; with
14 contract interest through December 31, 2006, the amount owing approximates \$85 million.

15 The Motion seeks an exemption from the provision of the Receivership Order provision
16 prohibiting bankruptcy filings, and explains why an involuntary chapter 11 petition in the
17 Bankruptcy Court should be allowed to proceed, in conjunction with an emergency motion to
18 appoint an interim trustee for USAIP.

19 The Motion and declarations attach the pleadings that would have been filed in Nevada on
20 March 29th, and show why the Movants planned to seek emergency relief, in order to take control
21 of the substantial, complex, interconnected network of entities and assets owned by USAIP. A
22 seven-page organizational chart is attached as Exhibit B to Exhibit 3 of the Hermann Decl. Such
23 assets and entities are being used and abused by USAIP's principals, Joseph Milanowski and
24 Thomas Hantges. This is not just a matter of whether the Placer Vineyards development should
25

1 be managed by Robert Russell, the focus of the receivership petition. Rather, USAIP presents a
2 much broader problem of multi-millions of dollars in asset values committed to repay creditors
3 and investors of Diversified and the USACM Liquidating Trust that have been and likely are still
4 being surreptitiously pledged and transferred by people asserting Fifth Amendment rights when
5 questioned about their actions (see Exhibit 4 to the Hermann Decl.).
6

7 For the same reasons an emergency hearing was necessary to appoint a interim trustee for
8 USAIP, an emergency hearing is necessary to enable bankruptcy relief even to be sought. The
9 Movants respect and appreciate this Court's decision to appoint a receiver. Had notice been
10 given to Diversified and the USACM Trust, they would have explained to the Court why they
11 believe that a chapter 11 bankruptcy case with all of the structure, procedures and settled law
12 designed to deal with multiple creditors, multiple assets and multiple entities is the best possible
13 forum for the massive insolvency issues facing USAIP. The Bankruptcy Code affords creditors
14 time-sensitive rights, such as the ability to avoid preferential and fraudulent transfers, that are lost
15 each day that the bankruptcy petition is delayed. The Movants also would have explained why
16 they believe that a well-qualified bankruptcy trustee specializing in complex transactions and
17 tracing missing funds, in the district where USAIP's assets, business operations and principal
18 creditors are located, its documents are already subject to federal court orders, and it has already
19 appeared, is preferable to a receivership in this district.
20
21

22 The Movants seek the opportunity to make that showing before the commencement of
23 what likely will be a redundant administration by clarifying or modifying phrasing in the
24 Receivership Order that arguably restrains Movants from taking such actions, and from
25 continuing with actions already underway in the Bankruptcy Court. The receivership would
26 remain intact pending a Bankruptcy Court decision on whether to appoint an interim chapter 11
27 trustee.
28

Appointment of a chapter 11 trustee is remains an urgent matter. This Court appears to have been offered a single candidate for temporary receiver, Waverton Group, LLC. It appears that such entity in reality consists principally of a single individual residing in Colorado, Richard A. Block (see fn. 2 to Block Declaration in Support of Receivership). Movants have been unable to confirm that he has posted the specified bond of \$500,000 or that he has qualified to do business in California. Movants have been informed that Mr. Block was in Los Angeles on Wednesday and will be in Phoenix on Friday. Movants have been unable to confirm that Mr. Block has even seen the USAIP office in Las Vegas, much less taken prompt action to secure USAIP records, freeze bank accounts, or otherwise protect the interests of all of USAIP's creditors as directed by the Receivership Order. With all due respect to Mr. Block, Mr. Block's previous cases, as described in his affidavit, are substantially less complex and involve substantially fewer assets and liabilities than that of USAIP. Movants do not have confidence that Mr. Block's resources and expertise will suffice for the demands of what will likely be an enormously time-consuming and difficult case.

17 For the reasons set forth herein and in the Motion, Movants request that the Court set an
18 emergency hearing on this matter at the earliest opportunity.

Respectfully submitted this 23rd day of March 2007.

LEWIS AND ROCA, LLP; and
ORRICK HERRINGTON & SUTCLIFFE LLP

By

Marc A. Levinson (California Bar No. 57613)
Jeffery D. Hermann (California Bar No. 90445)

1 EXHIBIT D

2
3 **OPPOSITION TO EMERGENCY MOTION FOR MODIFICATION OF ORDER**
4 **APPOINTING RECEIVER TO ALLOW FOR INVOLUNTARY BANKRUPTCY**
5 **PETITION TO BE FILED AGAINST USAIP**

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12 individual, Placer County Land Investors,
13 LLC, a California limited liability
14 company, and SVRB Investments, LLC,
15 an Arizona limited liability company,
16 Plaintiffs

17

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

20 Robert A. Russell, an individual,
21 Placer County Land Investors, LLC,
22 a California limited liability company,
23 and SVRB Investments, LLC, an
24 Arizona limited liability company,

25 Plaintiffs,

26 vs.

27 USA Investment Partners, LLC, a
28 Nevada limited liability company,

Defendant.

Case No. EDCV07-0343 SGL (JCRx)

**PLAINTIFFS' OPPOSITION TO
EMERGENCY MOTION AND
APPLICATION FOR HEARING ON
SHORTENED TIME ON
EMERGENCY MOTION FOR
MODIFICATION OF ORDER
APPOINTING RECEIVER TO
ALLOW FOR INVOLUNTARY
BANKRUPTCY PETITION TO BE
FILED AGAINST USAIP**

1 Robert A. Russell, an individual, Placer County Land Investors, LLC, a
2 California limited liability company, and SVRB Investments, LLC, an Arizona
3 limited liability company (collectively, the "Plaintiffs"), oppose the "Emergency
4 Motion for Modification of Order Appointing Receiver to Allow for Involuntary
5 Bankruptcy Petition to be Filed Against USAIP" and the "Application for Hearing
6 on Shortened Time for Emergency Motion for Modification of Order Appointing
7 Receiver to Allow for Involuntary Bankruptcy Petition to be Filed Against USAIP"
8 (together, the "Motion") received from USA Capital Diversified Trust Deed Fund,
9 LLC and USACM Liquidating Trust ("Movants") on the afternoon of March 29,
10 2007, as follows:

11 1. This Court's order (the "Order") appointing a temporary receiver
12 (the "Receiver"), issuing a temporary restraining order, and granting other equitable
13 relief, entered on March 28, 2007, charges the Receiver with preparing and filing
14 (within 20 days of the entry of the Order) a preliminary report (the "Report")
15 containing, among other things, recommendations, including a recommendation
16 regarding whether the receivership should be made permanent (among other things,
17 the Report could contain a recommendation that the Defendant be placed in
18 bankruptcy).

19 2. The relief requested by Movants in the Motion would
20 immediately and severely undermine this Court's control and jurisdiction over the
21 receivership estate and its assets.

22 3. At a minimum, the Receiver should be given the opportunity to
23 prepare and present the Report before the chance for this receivership to move
24 forward on an efficient and effective basis is destroyed. Movants will have an
25 opportunity to review and respond to the Report.

26 4. Accordingly, a preliminary injunction should issue continuing
27 the injunctive relief granted in the Order at least through the date (April 23, 2007)
28 set by the Court for the hearing to consider the Report.

5. It appears that the Order of this Court created the purported “emergency” that is the basis for the Motion.

6. The Motion does not show how or why the “emergency” vis-à-vis the Movants is any different from what existed 20 days ago or, for that matter, 6 months ago.

WHEREFORE, Plaintiffs respectively request that the Court deny the Motion.

10 | DATED: March 30, 2007 Respectfully submitted,

SulmeyerKupetz
A Professional Corporation

By:

David S. Kupetz
10
Attorneys for Robert A. Russell, an
individual, Placer County Land Investors,
LLC, a California limited liability
company, and SVRB Investments, LLC,
an Arizona limited liability company,
Plaintiffs

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and **not a party to this**
4 **action.** I am employed in the County of Los Angeles, State of California. My
business address is 333 South Hope Street, Thirty-Fifth Floor, Los Angeles,
California 90071-1406.

5 On March 30, 2007, I served the following document(s) described as
6 **PLAINTIFFS' OPPOSITION TO EMERGENCY MOTION AND**
7 **APPLICATION FOR HEARING ON SHORTENED TIME ON**
8 **EMERGENCY MOTION FOR MODIFICATION OF ORDER APPOINTING**
9 **RECEIVER TO ALLOW FOR INVOLUNTARY BANKRUPTCY PETITION**
10 **TO BE FILED AGAINST USAIP** on the interested parties in this action as
follows:

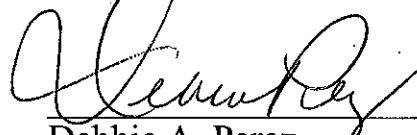
11 **SEE ATTACHED SERVICE LIST**

12 **BY FAX TRANSMISSION:** Based on an agreement of the parties to accept
13 service by fax transmission, I faxed the document(s) to the persons at the fax
14 numbers listed in the Service List. The telephone number of the sending facsimile
15 machine was 213.629.4520. No error was reported by the fax machine that I used.
16 A copy of the record of the fax transmission, which I printed out, is attached.

17 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or
18 an agreement of the parties to accept service by e-mail or electronic transmission, I
caused the document(s) to be sent from e-mail address dperez@sulmeyerlaw.com to
the persons at the e-mail addresses listed in the Service List. I did not receive,
within a reasonable time after the transmission, any electronic message or other
indication that the transmission was unsuccessful.

19 I declare under penalty of perjury under the laws of the United States of
20 America that the foregoing is true and correct and that I am employed in the office
21 of a member of the bar of this Court at whose direction the service was made.

22 Executed on March 30, 2007, at Los Angeles, California.

23 
24 Debbie A. Perez

1 **SERVICE LIST**
2

3 **VIA E-MAIL OR ELECTRONIC TRANSMISSION**

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27 Fax Number: (702) 598-1425

1 EXHIBIT E

2
3 **REPLY TO PLAINTIFFS' OPPOSITION TO**
4 **EMERGENCY MOTION FOR MODIFICATION OF ORDER APPOINTING RECEIVER**
5 **TO ALLOW FOR INVOLUNTARY BANKRUPTCY PETITION TO BE FILED**
6 **AGAINST USAIP; SUPPLEMENTAL DECLARATION OF JEFFERY D. HERMANN**

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33 *Attorneys for Creditors and Interested Parties USA Capital Diversified Trust Deed Fund, LLC
 34 and the USACM Liquidating Trust*

35 **UNITED STATES DISTRICT COURT**

36 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

37 Robert A. Russell, an individual,
 38 Placer County Land Investors, LLC,
 39 a California limited liability company,
 40 and SVRB Investments, LLC, an
 41 Arizona limited liability company

42 Plaintiff,

43 v.

44 USA Investment Partners, LLC, a
 45 Nevada limited liability company,
 46 Defendant.

47 Case No. EDCV07-0343 SGL (JCRx)

48 **Reply to Opposition to Emergency
 49 Motion For Modification of Order
 50 Appointing Receiver to Allow For
 51 Involuntary Bankruptcy Petition
 52 to be Filed Against USAIP;
 53 Supplemental Declaration of
 54 Jeffery D. Hermann**

55 Hearing Date: TBD
 56 Hearing Time: TBD

57 In their opposition (the "Opposition") to the Emergency Motion For Modification of
 58 Order Appointing Receiver to Allow For Involuntary Bankruptcy Petition to be Filed Against USAIP
 59 ("Emergency Motion"), Plaintiffs suggest that no emergency exists and that this Court and USAIP's
 60 creditors should wait 20 days for the temporary receiver to file a report which "could contain a
 61 recommendation" that USAIP be placed into bankruptcy.

62 Movants file this brief reply to make four points: First, Plaintiffs ignore the fact that
 63 Movants acquired the ability to take any action against USAIP only when the joint plan of

1 reorganization became effective on March 12, 2007. Movants immediately began diligently preparing
 2 for the filing of the involuntary, including lengthy discussions with the US Trustee's office in Las Vegas
 3 as to the selection of a trustee with unquestionable abilities and experience to take on a challenge of the
 4 size and complexity of USAIP. Movants could not have done any of this "20 days ago, or for that
 5 matter, 6 months ago." Opposition, page 3, lines 4 and 5. Plaintiffs fail to mention that their receiver
 6 motion was also filed on an ex parte basis – and with absolutely no notice to the constituencies with a far
 7 greater stake in the outcome, and whose eight-figure claims Plaintiffs knew to exist. Were not Plaintiffs
 8 in a position to take action 20 days ago or six months ago?

9 Second, the temporary receiver has no background in the USACM/USAIP debacle, and
 10 Movants are concerned about the qualifications of the temporary receiver to effectively deal with the
 11 challenge of the task. Unlike the temporary receiver, however, the professionals that represent the
 12 Movants have almost a year's worth of experience in the USACM/USAIP meltdown, having served in
 13 fiduciary capacities as officers of the Nevada Bankruptcy Court. Based in part on such experience,
 14 Movants concluded that the interests of the creditors of USAIP are best served by the commencement of
 15 a bankruptcy case for USAIP. Why would Movants (or the Court for that matter) rely upon a
 16 recommendation from the temporary receiver with no background whatsoever, who, no matter how
 17 talented, will likely not be familiar enough with the situation by the time of the report to even make such
 18 a recommendation, when Movants have far superior knowledge of the USACM/USAIP situation?

19 Third, there is no indication on the Court's docket that the temporary receiver has posted
 20 the \$500,000 bond required by the Court, has furnished evidence that his company is qualified to do
 21 business in California as required by the Court, or that the temporary receiver has filed his acceptance of
 22 the receivership and oath of office. As such, unless such pleadings are filed but not reflected upon the
 23 docket, the temporary receiver even now has no authority to act as this Court's receiver.

24 Fourth, Movants have the strong suspicion that Joseph Milanowski ("Milanowski") is
 25 complicit in the effort to obtain a receiver for USAIP and to thereby prevent the Nevada Bankruptcy
 26 Court from acquiring jurisdiction over USAIP. Movants note that Russell is an equity partner with
 27 USAIP, whose interests are wholly aligned with USAIP, and likely adverse to the interests of creditors
 28 of USAIP in those projects in which both own equity interests. Movants further note that, according to

1 the docket, USAIP not only failed to oppose the appointment of a receiver, but took the affirmative step
2 of filing a declaration stating USAIP's non-opposition to the appointment of a receiver. This is in direct
3 contrast to all prior discussions with Joseph Milanowski about the USACM/USAIP debacle wherein Mr.
4 Milanowski insisted, almost as a first order of priority, that he personally retain control of the assets and
5 business and financial affairs of USAIP. See, Supplemental Declaration of Jeffery D. Hermann,
6 paragraphs 4 and 5, attached hereto.

7 For the above reasons and the reasons set forth in the Motion, Movants respectfully
8 request that the Court grant the Motion of Movants.

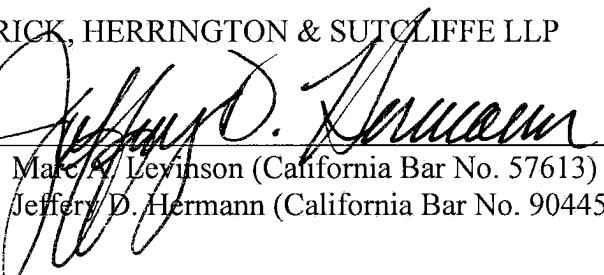
9 Respectfully submitted this 30th day of March 2007.

10 LEWIS and ROCA LLP

11 Rob Charles (Nevada Bar No. 6593)
12 Susan M. Freeman (Arizona Bar No. 4199)
13 Pro hac vice applications in process

14 and

15 ORRICK, HERRINGTON & SUTCLIFFE LLP

16 By: 

17 Marc A. Levinson (California Bar No. 57613)
18 Jeffery D. Hermann (California Bar No. 90445)

**Supplemental Declaration of Jeffery D. Hermann in Support of Emergency Motion For
Modification of Order Appointing Receiver to Allow For Involuntary Bankruptcy Petition
to be Filed Against USAIP**

I, Jeffery D. Hermann, hereby declare, verify and state as follows:

1. I am over the age of 18, am mentally competent, have personal knowledge of the facts that follow, and if called upon to testify thereto, I could and would do so under oath.

2. I am Of Counsel with Orrick, Herrington & Sutcliffe, LLP (“Orrick”), resident in its office in Los Angeles, California. Orrick is counsel to the post-Effective Date USA Capital Diversified Trust Deed Fund, LLC.

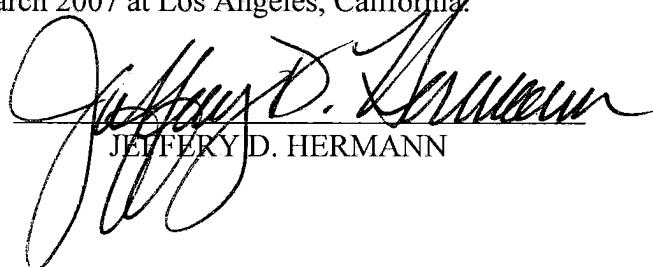
3. I make this declaration in support of the Emergency Motion For Modification of Order Appointing Receiver to Allow For Involuntary Bankruptcy Petition to be Filed Against USAIP.

4. I was personally involved last summer and autumn in many meetings relating to the USACM bankruptcy cases involving Russell Walker, counsel for Joseph Milanowski and USAIP, including several of such sessions involving Mr. Milanowski himself. At that time, Orrick represented the official committee of investors in the USA Capital Diversified Trust Deed Fund. The meetings involved negotiations concerning possible structures whereby, among other things, the assets of USAIP would be placed into trust for the benefit of creditors. Without revealing any of the details of such protected settlement discussions, one of the broad points of disagreement between Mr. Milanowski and the representatives of the other bankruptcy constituencies was Mr. Milanowski's absolute insistence that he retain a great deal of control over the assets of USAIP and the business and financial affairs of USAIP, whereas the estate representatives insisted that such control be exercised by a neutral trustee.

5. Based upon my many discussions with Mr. Milanowski and his counsel, I find it not credible to believe that Mr. Milanowski would now consent to the appointment of a receiver for USAIP.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 forgoing is true and correct.

3 Executed this 30th day of March 2007 at Los Angeles, California.

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JEFFERY D. HERMANN

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CERTIFICATE OF SERVICE

I, Jeffery D. Hermann, declare:

I am a resident of the State of California, am over the age of eighteen years, and am not a party to the within action. My business address is 777 South Figueroa Street, Suite 3200, Los Angeles, CA 90017, on March 30, 2007, at 2:__ p.m. Pacific time, I served the following documents in the above captioned matter:

Reply to Opposition to Emergency Motion For Modification of Order Appointing Receiver to Allow For Involuntary Bankruptcy Petition to be Filed Against USAIP; Supplemental Declaration of Jeffery D. Hermann.

- By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth on:
- by email: I transmitted a copy of the document(s) listed above via email to the addressee(s). **(SEE ATTACHED SERVICE LIST)**
- By placing the document listed above via Federal Express to the Person('s) at the address(es) set forth below:
- By hand delivery

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 30, 2007, at Los Angeles, California.

Jeffrey D. Hermann

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39 Joseph D. Milanowski and Housing Partners, LLC*

40 NOTE THAT NEITHER EMAIL ADDRESS FOR MR. HOLDAWAY WORKED DESPITE
41 THE FACT THAT THE FIRST ADDRESS WAS COPIED FROM HIS FIRM'S WEBSITE
42 AND THE SECOND ADDRESS WAS COPIED FROM THE STATE BAR WEBSITE. A
43 COPY OF THE PLEADINGS IS NOW BEING SERVED BY MESSENGER OR OVERNIGHT
44 MAIL, AND A SUBSEQUENT CERTIFICATE OF SERVICE WILL BE FILED.

NOTE THAT NEITHER EMAIL ADDRESS FOR MR. HOLDAWAY WORKED DESPITE THE FACT THAT THE FIRST ADDRESS WAS COPIED FROM HIS FIRM'S WEBSITE AND THE SECOND ADDRESS WAS COPIED FROM THE STATE BAR WEBSITE. A COPY OF THE PLEADINGS IS NOW BEING SERVED BY MESSENGER OR OVERNIGHT MAIL, AND A SUBSEQUENT CERTIFICATE OF SERVICE WILL BE FILED.

1 EXHIBIT F

2
3 **OPPOSITION TO EMERGENCY MOTION FOR MODIFICATION OF ORDER**
4 **APPOINTING RECEIVER TO ALLOW FOR INVOLUNTARY BANKRUPTCY**
5 **PETITION TO BE FILED AGAINST USAIP**

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9

**UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

11 Robert A. Russell, individual, Placer County
 12 Land Investors, LLC, a California limited
 13 liability company, and SVRB Investments,
 LLC, an Arizona limited liability company

Case No.: EDCV07-0343 SGL (JCRx)

14 Plaintiffs,

**USA INVESTMENT PARTERS, LLC'S
 OPPOSITION TO USA CAPITAL
 DIVERSIFIED TRUST DEED FUND, LLC
 AND THE USACM LIQUIDATING TRUST'S
 EMERGENCY MOTION FOR
 MODIFICATION OF ORDER APPOINTING
 RECEIVER TO ALLOW FOR
 INVOLUNTARY BANKRUPTCY PETITION
 TO BE FILED AGAINST USAIP**

15 vs.
 16 USA Investment Partners, LLC, a Nevada
 limited liability company,

17 Defendant.

18
 19
 20 USA Investment Partners, LLC (“USAIP”) submits the following Opposition to
 21 USA Capital Diversified Trust Deed Fund, LLC (“Diversified”) and the USACM
 22 Liquidating Trust’s (“USACM”) (collectively the “Movants”) Emergency Motion for
 23 Modification of Order Appointing Receiver to Allow for Involuntary Bankruptcy Petition to
 24 be Filed against USAIP (“Motion to Modify”).

25 **INTRODUCTION**

26 This Court should deny the Movants’ Motion to Modify where the modification it
 27 seeks would eviscerate the Temporary Receiver’s ability to preserve USAIP’s assets and
 28 effectively and efficiently administer USAIP’s estate. The Ninth Circuit has expressly held

1 that the primary purpose of equity receiverships is to promote the orderly and efficient
2 administration of an estate for the benefit of creditors. The Movants' Motion to Modify,
3 however, seeks not to advance the orderly and efficient administration of USAIP's estate,
4 but rather, to protect their own interests at the detriment of USAIP, its creditors, the
5 Receiver, and this Court's jurisdiction.

6 The Movants seek modification of this Court's Order Appointing Richard A. Block
7 of the Waverton Group, LLC as the Temporary Receiver (the "Receiver") of USAIP so that
8 Movants may file an involuntary chapter 11 bankruptcy petition against USAIP in the
9 United States Bankruptcy Court for the District of Nevada and seek the appointment of an
10 interim trustee. Specifically, Movants contend that this Court's Order Appointing Receiver
11 should be modified so as to: (1) allow the Movants to commence and prosecute an
12 involuntary bankruptcy petition against USAIP or its entities; (2) allow the Movants to
13 commence or continue any adversary proceedings or other litigation against or involving
14 USAIP in the Nevada Bankruptcy Court; (3) allow the appointment of an interim trustee or
15 permanent bankruptcy trustee for USAIP or its entities; (4) allow a bankruptcy trustee to
16 take possession, custody, and control of USAIP's business and financial affairs; and (5)
17 provide that this Court's Receiver Order shall not preclude the Nevada Bankruptcy Court
18 from considering and ruling upon any and all of the aforementioned matters.

19 USAIP contends that these modifications would undermine the purposes of
20 appointing the Receiver in this case where it would result in jurisdictional disputes between
21 this Court and the Nevada Bankruptcy Court as well as a struggle for control over USAIP's
22 assets between this Court's appointed Receiver and a bankruptcy trustee appointed by the
23 Nevada court. The result of this confusion and conflict would be an impossible
24 administration of the estate accompanied by the depletion of USAIP's assets, the very
25 outcome the appointment of the Receiver seeks to avoid. Accordingly, USAIP contends that
26 Movants' Motion to Modify undermines the purpose of a receivership and should therefore
27 be denied

STATEMENT OF RELEVANT FACTS

1. USAIP is a limited liability company registered under the laws of the state of Nevada. USAIP's members include: Joseph D. Milanowski ("Milanowski") and Thomas A. Hantges ("Hantges").

2. While USAIP is a Nevada corporation, its primary assets are located within the State of California. Those assets are summarized as follows: (a) 50% membership interest in Asbhy USA, LLC, a California corporation, which owns real property located in the City of Temecula in southwest Riverside County, California; (b) 50% membership interest in Capital Land Investors, LLC and Random Development, LLC, California corporations, which own real property located in Riverside County, California; (c) 50% membership interest in Oak Mesa Investors, LLC and Buffalo Land Development, LLC which own real property in Calimesa, California; (d) 88% controlling interest in Placer County Land Investors, LLC, which owns property in Placer County, California; (e) 70% membership interest in Bundy Canyon Land Development, LLC, a California corporation, which owns real property in Riverside, California; (f) 100% membership interest in USA Investors VI, LLC, which owns property in Palm Springs, California; (g) 55% membership interest in Phillips USA, LLC which owns property in California; (h) 100% membership interest in Tree Moss, LLC, a California corporation, which owns real property in Palm Springs, California; and (i) 50% membership interest in Happy Valley, LLC which owns real property located in Palm Springs, California.¹

3. Currently, entities related to USAIP are the subject of bankruptcy proceedings (the “Bankruptcy Cases”) pending in the United States Bankruptcy Court for the District of Nevada. Those entities include” USA Commercial Mortgage Company, USA Capital Realty Advisors, LLC, USA Securities, LLC, USA Capital First Trust Deed Fund, LLC, and USA Capital Diversified Trust Deed Fund, LLC.

¹ A more detailed description of USAIP's holdings is set forth in the Declaration of Robert A. Russell in Support of Ex Parte Application for (1) Appointment of Temporary Receiver, (2) Temporary Restraining Order, (3) Other Equitable Relief, and (4) Order to Show Cause Why a Permanent Receiver Should Not be Appointed and a Preliminary Injunction Should Not Issue.

1 4. The Bankruptcy Cases were filed on April 13, 2006, and have not resulted in
2 any beneficial settlements, compromises, or agreements between the debtors, committees,
3 legions of investors, and USAIP. In fact, the plan of reorganization took over \$40 million
4 from investors to fund the Liquidation Trustee and other pre and post-confirmation actions.

5 5. To date, the attorneys for the creditors and their committees have drained
6 nearly \$30 million in attorneys fees and costs from the debtors' assets.

7 6. On March 23, 2007, Robert A. Russell, Placer County Land Investors, LLC,
8 and SVRB Investments, LLC (collectively the "Creditors"), filed an Ex Parte Application
9 for (1) Appointment of Temporary Receiver, (2) Temporary Restraining Order, (3) Other
10 Equitable Relief, and (4) Order to Show Cause Why a Permanent Receiver Should Not be
11 Appointed and a Preliminary Injunction Should Not Issue ("Application for Receiver") with
12 this Court.

13 7. The Creditors filed their Application for Receiver in the hopes of avoiding
14 the very delay, waste, and inefficiencies which riddled the Bankruptcy Cases.

15 8. On March 27, 2007, USAIP filed a Declaration of Non-Opposition to the
16 Application for Receiver wherein USAIP agreed that appointment of a receiver by this Court
17 would be in the best interests of USAIP and its creditors.

18 9. On March 27, 2007, this Court signed the Creditors' Proposed Order
19 Appointing Temporary Receiver, Temporary Restraining order and Other Equitable Relief,
20 and Order to Show Cause Why a Preliminary Injunction Should Not Issue and a Permanent
21 Receiver Should Not Be Appointed ("Order Approving Receiver").

22 10. The Order Approving Receiver appointed Richard A. Block of the Waverton
23 Group, LLC as the Temporary Receiver over USAIP and its assets. This Court vested the
24 Receiver with authority to take immediate control of USAIP and its assets to hold *in
25 custodia legis*.

1 11. This Court granted numerous powers to the Receiver so that he can
2 effectively and efficiently administer USAIP and its assets. Some of those powers include:
3 (1) immediate control of the Receivership Estate, **to the exclusion of all others**; (2) control
4 over the Estate to maximize the value and prevent diminution of the value of the
5 Receivership Estate; and (3) institute such legal actions as the Receiver deems reasonably
6 necessary to collect accounts and debts, protect the Property, and to recover possession of
7 the Property of USAIP. (emphasis added).

8 12. This Court's Order Approving Receiver also enjoined any person, entity, or
9 agency from collecting property of USAIP and otherwise interfering with the operation of
10 the Receivership Estate or the Receiver's exercise of his power. This Court also stayed all
11 actions that purport to seek equitable relief against the Receivership Estate or the Receiver
12 regardless of venue or jurisdiction. Moreover, the Order stayed all civil litigation
13 proceedings, wherever located, to the extent such actions and proceedings interfere with this
14 Court's exclusive control over USAIP or any of its assets, and all courts having any
15 jurisdiction thereof are enjoined from taking or permitting any action until order of this
16 Court.

17 13. On March 29, 2007, USA Capital Diversified Trust Deed Fund, LLC and the
18 USACM Liquidating Trust (the "Movants") filed an Emergency Motion for Modification of
19 this Court's Order Appointing Receiver. In their Motion to Modify, the Movants contend
20 that they were poised to file an involuntary chapter 11 bankruptcy petition against USAIP in
21 the Nevada Bankruptcy Court. The Movants contend that even as undersecured creditors of
22 USAIP, they are entitled to disregard the appointment of the Receiver and to pursue their
23 involuntary bankruptcy petition.

14. Specifically, Movants' Motion to Modify seeks the following modifications to this Court's Order Appointing Receiver: (1) allow the Movants to commence and prosecute an involuntary bankruptcy petition against USAIP or its entities; (2) allow the Movants to commence or continue any adversary proceedings or other litigation against or involving USAIP in the Nevada Bankruptcy Court; (3) allow the appointment of an interim trustee or permanent bankruptcy trustee for USAIP or its entities; (4) allow a bankruptcy trustee to take possession, custody, and control of USAIP's business and financial affairs; and (5) provide that this Court's Receiver Order shall not preclude the Nevada Bankruptcy Court from considering and ruling upon any and all of the aforementioned matters

ARGUMENT

The Movants' Motion to Modify should be denied where the relief it seeks would undermine the purposes for appointing the Receiver in this case by frustrating the Receiver and this Court's orderly and efficient administration of USAIP's estate. The Ninth Circuit has consistently held that the "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors."

SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir. 1986). Moreover, the Ninth Circuit has held that where a creditor seeks the appointment of a receiver and the debtor does not object, such appointment by the district court is proper. Resolution Trust Corp. v. Bayside Developers, 43 F.3d 1230, 1242 (9th Cir. 1995).

In this case, the Creditors filed their Application for Receiver out of fear that assets of USAIP are at risk of being diminished so long as USAIP remains under the control of Milanowski and Hantges. More specifically, the Creditors contend that USAIP's failure to meet certain financial commitments has placed the Creditors in "dire financial straits" and

1 facing "imminent and irreparable harm." The Creditors have contended that appointment of
2 a receiver, and the subsequently removal of USAIP's day-to-day operations from
3 Milanowski and Hantges, will afford them the opportunity to procure substitute financing to
4 continue with their development projects and maximizing the return to creditors on their
5 claims.

7 This Court's Order Approving Receiver vested the Receiver with the powers and
8 authorities necessary to carry out the Ninth Circuit's mandate that an equity receivership
9 promote the orderly and efficient administration of the estate for the benefit of creditors.
10
11 SEC v. Hardy, 803 F.2d at 1038. The Order Approving Receiver facilitates the marshalling
12 of USAIP's assets free of delay or dispute by allowing the Receiver to take immediate
13 possession of USAIP and all of its assets. Furthermore, the Order prudently enjoins all
14 actions that seek equitable relief against the Receiver or the Receivership estate regardless of
15 venue or jurisdiction so that the Receiver and this Court may administer USAIP and its
16 assets without conflicts from competing creditors or courts. Additionally, the Order enjoins
17 all civil legal proceedings wherever located to the extent that such actions interfere with this
18 Court's exclusive control over USAIP and its assets. In short, this Court's Order arms the
19 Receiver with the powers and authorities necessary to efficiently administer USAIP's estate
20 for the benefit of USAIP and its creditors.

22
23 The Movants' Motion to Modify, however, seeks to strip the Receiver of his control
24 over USAIP, as well as this Court's jurisdiction over the USAIP estate, and replace it with a
25 dual system of governance which would be grossly inefficient at best and utterly chaotic at
26 worse. Specifically, Movants seek modification of this Court's Order Appointing Receiver
27 so that they may: (1) proceed with an involuntary chapter 11 bankruptcy petition against
28

1 USAIP or any entities directly or indirectly owned or controlled by USAIP; (2) commence
2 or continue any adversary proceeding or other litigation against or involving USAIP or any
3 of its entities; (3) seek the appointment of an interim trustee or a permanent bankruptcy
4 trustee for USAIP or its entities; (4) allow said bankruptcy trustee the right to take
5 possession, custody, and control of the business and financial affairs of USAIP and its
6 assets; and (5) allow the Nevada Bankruptcy Court the right to consider and rule upon any
7 of the above matters. USAIP contends that each of these modifications essentially
8 eviscerates the Receivership and replaces it with a chapter 11 bankruptcy proceeding.

9
10 First, allowing the Movants to proceed with their involuntary chapter 11 bankruptcy
11 petition would lead to a conflict between the Receiver and a bankruptcy trustee over control
12 of USAIP, its assets, and how best to administer USAIP for the benefit of creditors.
13
14 Movants proceed under the misguided fiction that even with the appointment of a
15 bankruptcy trustee, be it interim or permanent, the Receiver can still “exercise as much
16 control over USAIP as he is able to do,” which is to say that the Receiver may exercise as
17 much control over USAIP as the Movants’ chosen bankruptcy trustee will allow. The
18 Movants’ proposed modification allows for a bankruptcy trustee to take possession and
19 control over USAIP and its assets, yet void from this modification is any plan for how the
20 Receiver and trustee would work together and how control over USAIP and its assets would
21 be determined.

22
23 Furthermore, Movants assert that an interim trustee is necessary in order to navigate
24 USAIP’s complex web of assets and liabilities. However, USAIP contends that the Receiver
25 is not only competent and able to sift through the numerous entities and assets associated
26 with USAIP, but that the Receiver is necessary in order to avoid the web of dysfunction,

1 conflict, and waste associated with the Bankruptcy Cases. The administration of the
2 Bankruptcy Cases has been fraught with conflicts of interest, self-serving tactics, and the
3 resultant waste of the debtors' assets. Ultimately, modifying the Order to allow the Movants
4 to proceed with their chapter 11 bankruptcy petition would infect this case with the same
5 problems and inefficiencies which currently plague the Bankruptcy Cases. Accordingly,
6 USAIP contends the Receiver is necessary to efficiently administer USAIP's assets and
7 escape the pitfalls which riddle the Bankruptcy Cases.

8
9 Second, the Movants' modification would strip this Court of sole jurisdiction over
10 USAIP and its assets as contemplated by the Order Approving Receiver. Movants seek to
11 vest the Nevada Bankruptcy Court with the authority to consider and rule upon any matter
12 related to an involuntary chapter 11 bankruptcy, any related adversary proceedings or
13 litigation against USAIP and its related entities, the appointment of an interim trustee, the
14 appointment of a permanent trustee, and the trustee's seizure of USAIP and its assets.
15 USAIP contends that vesting such authority with the Nevada Bankruptcy Court would strip
16 this Court of its authority to administer the estate and would create a dual system of
17 governance where neither court was assured finality of its orders, thereby rendering
18 administration of the USAIP estate impossible.

19
20 The Ninth Circuit has been clear that a receivership's purpose is to promote an
21 orderly and efficient administration of an estate for the benefit of creditors. The Movants'
22 proposed modifications not only frustrate that purpose but completely undermines it.
23 Movants seek to replace the clear authority and sole jurisdiction of the Receiver and this
24 Court with a muddled system where no one party or court has exclusive control over
25 USAIP, its assets, or the decisions relating to its administration. Accordingly, the Movants'
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1 Motion to Modify should be denied.

2 **CONCLUSION**

3 For the foregoing reasons, USAIP opposes the Movants' Motion to Modify and asks
4 this Court to deny said Motion and affirm its Order Appointing Temporary Receiver.

5 DATED this 30th day of March, 2007.

6 **WOODBURY & KELSER, P.C.**

7 
8

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16 and

17 Richard E. Holdaway
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21 Telephone: (909) 391-9000
22 Facsimile: (909) 391-9117

23 Attorneys for Defendant USA Investment
24 Partners, LLC

1 **PROOF OF SERVICE**

2 I do hereby certify that I caused to be mailed, via email or electronic transmission, a
3 true and correct copy of the foregoing **USA INVESTMENT PARTERS, LLC'S OPPOSITION**
4 **TO USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC AND THE USACM**
5 **LIQUIDATING TRUST'S EMERGENCY MOTION FOR MODIFICATION OF ORDER**
6 **APPOINTING RECEIVER TO ALLOW FOR INVOLUNTARY BANKRUPTCY PETITION**
7 **TO BE FILED AGAINST USAIP** on this 30th day of March, 2007 to the following:

8 David S. Kupetz
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Lindsey Boynton

1 EXHIBIT G

2 **ORDER ON APPLICATION FOR HEARING ON SHORTENED TIME FOR**
3 **EMERGENCY MOTION FOR MODIFICATION OF ORDER APPOINTING RECEIVER**
4 **TO ALLOW FOR INVOLUNTARY BANKRUPTCY PETITION TO BE FILED**
5 **AGAINST USAIP**

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1 *Attorneys for Creditors and Interested Parties USA Capital Diversified Trust Deed Fund, LLC and the USACM Liquidating Trust*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

Robert A. Russell, an individual,
Placer County Land Investors, LLC,
a California limited liability company,
and SVRB Investments, LLC, an
Arizona limited liability company

Plaintiff,
v.
USA Investment Partners, LLC, a
Nevada limited liability company,
Defendant

Case No. EDCV07-0343 SGL (JCRx)

**[REDACTED] Order on Application
for Hearing on Shortened Time
for Emergency Motion For
Modification of Order Appointing
Receiver to Allow For Involuntary
Bankruptcy Petition to be Filed
Against USAIP**

Hearing Date:
Hearing Time

Courtroom #1

Allow For Involuntary Bankruptcy Petition to be Filed Against USAIP ("Motion"), good cause appearing, IT IS HEREBY ORDERED:

3 1. Hearing on the Motion is hereby set for 4/4/07, 2007, at the time of 1:30 pm
4 in United States District Court, Courtroom #1 at 3470 Twelfth Street, Riverside,
5 California. *ASJ*

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7 2. Any opposition shall be due at the time of the hearing, on 4/3/07. *ASJ*

8 3. Movants shall provide to counsel for Plaintiffs and to counsel for Defendant (i) telephonic
9 notice of such hearing no later than 5 o'clock, P.m. on 3/30, 2007; and (ii) a *ASJ*
10 copy of this Order by facsimile or scanning and email no later than one hour after such
11 time. *ASJ*

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13 4. To the extent that Movants have not already provided counsel for Plaintiffs and counsel
14 for Defendant with a copy of the Motion, Movants shall do so by personal delivery,
15 facsimile or by scanning and email, no later than 5 o'clock, P.m. on 3/30, 2007, *ASJ*,
16 or, if by overnight courier, in the case of counsel for Defendant, by 4/2, *ASJ*

Ordered this 30 day of March 2007.

UNITED STATES DISTRICT COURT

By: S. G. Lai

Stephen G. Larson

United States District Court Judge

STEPHEN G. LARS

UNITED STATES DISTRICT JUDGE

Presented by:

LEWIS AND ROCA AND
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: Jeffrey D. Hermann
Jeffrey D. Hermann

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